UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation No.:
CERTAIN ORANGE JUICE	)	731-TA-1089 (Preliminary)
FROM BRAZIL	)	

Pages: 1 through 223

Place: Washington, D.C.

Date: January 19, 2005

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation No.:
CERTAIN ORANGE JUICE FROM BRAZIL	)	731-TA-1089 (Preliminary)
	)	

Wednesday,
January 19, 2005

Room No. 101
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The preliminary conference commenced, pursuant to Notice, at 9:30 a.m., at the United States International Trade Commission, ROBERT CARPENTER, Director of Investigations, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

ROBERT CARPENTER, DIRECTOR OF INVESTIGATIONS
DIANE MAZUR, SUPERVISORY INVESTIGATOR
ELIZABETH HAINES, INVESTIGATOR
DAVID GOLDFINE, ATTORNEY/ADVISOR
JIM FETZER, ECONOMIST
JUSTIN JEE, AUDITOR
STEVE BURKET, COMMODITY-INDUSTRY ANALYST

APPEARANCES: (cont'd.)

In Support of the Imposition of Antidumping Duties:

On behalf of Florida Citrus Mutual; A. Duda & Sons, Inc., d/b/a Citrus Belle; Citrus World, Inc.; Peace River Citrus Products, Inc.; and Southern Gardens Citrus Processing Corporation, d/b/a Southern Gardens:

ANDREW LAVIGNE, Executive Vice President and CEO, Florida Citrus Mutual
MARTIN MCKENNA, President, Florida Citrus Mutual Grower
ROBERT BEHR, Vice President, Planning and Product Services, Citrus World, Inc.
CHARLES LUCAS, Vice President, Southern Gardens Citrus
AMY WARLICK, Economist, Barnes, Richardson & Colburn

MATTHEW T. MCGRATH, Esquire
STEPHEN W. BROPHY, Esquire
NEVEN STIPANOVIC, Esquire
Barnes, Richardson & Colburn
Washington, D.C.

In Opposition to the Imposition of Antidumping Duties:

On behalf of Louis Dreyfus Citrus SA, and Louis Dreyfus Citrus, Inc.; and Sucocitrico Cutrale Ltda.:

DANIEL TILLEY, Professor of Agricultural Economics, Oklahoma State University
RANDAL FREEMAN, Senior Vice President, Louis Dreyfus Citrus, Inc.
HUGH THOMPSON, President, Cutrale Citrus Juices USA, Inc.

CHRISTOPHER DUNN, Esquire
REBECCA GRIFFIN, Esquire
Willkie, Farr & Gallagher
Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to the Imposition of Antidumping Duties:

On behalf of Citrosuco Paulista, S.A. and Citrosuco North America, Inc.:

NICK EMMANUEL, CEO and President, Citrosuco America
JERRY RICE, Former CEO and President of Lykes Pasco

ROBERT KALIK, Esquire
BRENNA STEINERT, Esquire
Kalik & Lewin
Bethesda, Maryland

On behalf of Montecitrus Group:

F. AMANDA DEBUSK, Esquire
DUANE W. LAYTON, Esquire
SYDNEY H. MINTZER, Esquire
Miller & Chevalier
Washington, D.C.

I N D E X

I N D E X

P R O C E E D I N G S

(9:30 a.m.)

MR. CARPENTER: Good morning and welcome to the United States International Trade Commission's conference in connection with the preliminary phase of antidumping investigation No. 731-TA-1089 concerning imports of Certain Orange Juice From Brazil.

My name is Robert Carpenter. I'm the Commission's Director of Investigations, and I will preside at this conference. Among those present from the Commission staff are, from my far right, Diane Mazur, the supervisory investigator; Elizabeth Haines, the investigator; on my left, David Goldfine, the attorney/advisor; Jim Fetzer, the economist; Justin Jee, the auditor; and Steve Burket, the industry analyst.

I understand the parties are aware of the time allocations. I would remind speakers not to refer in your remarks to business proprietary information and to speak directly into the microphones. We also ask that you state your name and affiliation for the record before beginning your presentation.

Are there any questions?

(No response.)

MR. CARPENTER: If not, welcome, Mr. McGrath. Please proceed with your opening statement.

MR. MCGRATH: Thank you and good morning. My name is Matt McGrath of Barnes, Richardson & Colburn, I represent the Petitioners in this investigation. We'll introduce ourselves one by one.

We appreciate the opportunity to appear here today to demonstrate how unfair pricing by Brazilian imports of bulk frozen concentrated orange juice for manufacturing and bulk not-from-concentrate orange juice have placed U.S. growers of oranges for processing in the most precarious position that they've ever faced and reduced the Florida independent processing industry, at least those who have not been absorbed by Brazilian interests to this date, to a shell of what they once were.

We know that you're currently examining this industry in a sunset review of the old dumping order that you know that we've withdrawn our interest in that review because we believe it no longer has any remedial benefit in addressing the problems that we're here to talk about today.

Ironically, many of the Respondent foreign producers here today have urged you to proceed ahead with that review and have challenged at the Commerce

Department the initiation of this investigation until that sunset review is finished of the old order. In essence, they're seeking protection from that dumping order by that dumping order, not from the effects of dumping, but from the effects of a new investigation upon them.

Even more ironically, those producers claim that it is we who have turned the statute on its head. The information that our witnesses will present today will illustrate why they're anxious, I believe, to avoid scrutiny of their actions.

Brazil is the largest producer of orange juice in the world. Its industry consists of only a few dominant processors who account for 85 percent of the world's juice exports and more than 50 percent of the world's supply. It's an industry built solely for exports, and there are only two major consumer markets for orange juice, Europe and North America.

Subject combined imports of FCOJ and NFC increased by 26 percent over the last three seasons, and NFC increased twelvefold from a negligible level, now accounting for four percent of the U.S. market. U.S. inventories also increased by 400 percent over that period.

For a commodity like orange juice, price is

even more important than volume, as we will demonstrate today. The import prices and the commodity futures prices for orange juice have fallen in tandem over the past three years to levels that have been catastrophic to growers.

Import values declined significantly over the last three years. The futures market prices last summer dropped to their lowest level in 27 years. We will discuss today also why the futures price has become so critical in this market and has begun to change from a tool for hedging into a means by which large foreign producers can affect the U.S. market and hold down their own fruit costs for their U.S. operations.

Growers will explain today that prices for oranges have now fallen steadily to levels which are insufficient to recover their costs. Processors will explain that the continuing low prices and high production led to record inventory levels at the end of last season, but you will also hear from our opponents that the hurricanes of 2004 changed all that; that U.S. production is expected to fall, that prices are rising, that imports are needed to make up the shortfall.

If all of that meant that our growers could

recover their cost of production and rebuild from their hurricane damage, we would probably not be here today. The fact is that even the recent rise in the futures price from its record low level is not sufficient to cover this year's cost since inventory levels are capping potential price increases, and many growers are now close to closing down.

The United States remains the cheapest market for orange juice. You will not hear us asking for limits on imports or protection from our own inefficiencies. The growers and independent processors of Florida only want fair pricing which lets them compete.

Thank you.

MR. CARPENTER: Thank you, Mr. McGrath.

Mr. Dunn?

MR. DUNN: Good morning. My name is Chris Dunn, Willkie, Farr & Gallagher, and I am appearing this morning with my colleague, Bob Kalik of the firm of Kalik & Lewin. We are appearing on behalf of Brazilian exporters and importers who also happen to be three of the largest U.S. processors of orange juice in this country.

The Petitioners' burden in this case is to demonstrate that there's a reasonable indication that

the domestic industry is currently being injured or threatened with injury by reason of subject imports. The testimony that we will present later on today from these American processors will vigorously refute their claims.

What we will demonstrate is, first, that imports of orange juice from Brazil have virtually no relationship to the condition of the domestic industry. The condition of the U.S. industry is wholly a function of the market price for orange juice.

Those prices, however, are determined almost entirely by the size of the domestic crop and accumulated domestic inventories. Over the period of investigation, Florida saw a series of very large crops, especially in 2003-2004. At the same time, domestic consumption of orange juice has dropped over nine percent. The result? Large inventories of domestic juice.

It was these inventories and projected continued large domestic crops that caused the price of U.S. orange juice to drop beginning in the late summer of 2003 and continuing through the summer of 2004. The size of the domestic crop and accumulated inventories overwhelmed imports, which amounted to

less than 15 percent of U.S. consumption during the entire period of investigation and which declined through mid 2004.

Imports could simply not be the cause of any problems the domestic industry is experiencing or has experienced. To the extent there was a problem with domestic prices, that problem, however, ended with the Florida hurricanes last summer. The drop in the Florida crop has been the largest in over 30 years.

Inventories are projected to be cut almost in half by June of this year. As a result, prices have increased 55 percent since last summer and are likely to increase further over the short and medium term at least.

The Commission is required by law to determine present injury by examining the most current information possible. That information shows a dramatic turnaround in prices and conditions for the U.S. industry. There simply is no current injury by reason of imports.

Similarly, imports of juice do not threaten the domestic industry. In fact, given the dramatic decline in the Florida crop for this year, imports are going to be needed more than ever. Unfortunately, it will be difficult for the Brazilian industry to

increase exports to the U.S. significantly as Brazil's current crop is fully committed, and next year's crop is projected to be down significantly.

While Brazilians will try to increase imports somewhat in this year to come, this increase is intended to help save U.S. production, not to injure it.

Finally, you'll hear testimony today about the issue of the like product. The Petitioners have tried to gerrymander the scope of this investigation to claim a single like product for two very different and distinct products, frozen concentrated orange juice and not-from-concentrate juice.

The Commission has always considered these to be two separate like products and for good reason. As you will hear today, the two products are physically different. They're produced on different equipment. They're priced differently, they're sold differently, and they're perceived very differently by the consumer. They cannot really be grouped as a single like product.

Thank you.

MR. CARPENTER: Thank you, Mr. Dunn.

Now if the domestic panel would please come forward for your presentation?

(Pause.)

MR. MCGRATH: Good morning, members of the staff. Again, I'm Matt McGrath of Barnes, Richardson & Colburn, and we appreciate the opportunity to appear today on behalf of the Petitioners here, Florida Citrus Mutual, an organization of growers, Citrus World, Peace River Citrus Products, Southern Gardens Citrus and Citrus Belle.

I'd like to present our witnesses at the outset so they can go right into their testimony and then offer a few initial comments on some of the legal issues that I think will come up.

First of all, to my left is Mr. Andy LaVigne, who is the executive vice president and CEO of Florida Citrus Mutual, an association of 10,400 orange growers in Florida. Next will be Mr. Marty McKenna to his left. Marty is an orange grower and handler and the president of FCM.

He'll be followed by Mr. Bob Behr, who is the vice president of Citrus World and Florida's Natural Growers, a cooperative which processes oranges and has approximately 1,100 member growers. Mr. Behr is also a grower.

Followed by Charles Lucas to my immediate right, the vice president of Southern Gardens Citrus,

and finally we'll have testimony from Amy Warlick of Barnes, Richardson & Colburn, our economist. I'm also accompanied by my colleagues, Neven Stipanovic and Stephen Brophy from Barnes Richardson.

A few points at the outset on a couple of legal issues. This case obviously comes to the Commission under some unusual circumstances. A separate dumping order has been in effect on FCOJ for several years from which almost all Brazilian processors have been revoked or were excluded at the outset. For that reason, you're pretty familiar with this industry and its current condition.

The additional circumstances here to be aware of, first, an additional imported product is covered, which was not covered under that order, and that is the NFC juice.

Second, the Commission is required to evaluate the impact of subject imports from all the Brazilian producers except those that are still covered by the old order, so we're not attempting to try to cover them under the umbrella of this investigation.

Third, you're looking here under a Title VII case at obviously a three year period of investigation rather than the five year window that you look at in a

sunset review.

There have been a number of issues that have been raised, legal arguments raised at the Commerce Department. Many of them aren't relevant to what you're doing here. What is relevant is the fact that material injury was not prevented or ameliorated in any way by the presence of an antidumping order that was in effect over the last few years at least since there have been no importations under this order, at least none that we're aware of, of any magnitude sufficient to have any effect. Our position is that the existence of that order had no effect.

With respect to the definition of the domestic industry, we want to continue with our position that growers of oranges for processing should be included in the industry, along with processors who extract juice from those oranges to make FCOJM and NFC, which are bulk products for further processing.

The statute provides that with respect to processed agricultural products the grower of the input should be included in the industry with the processor as long as there's a direct line of processing from the raw input to the processed product and there's substantial coincidence of economic interest between the grower and processor. Those

circumstances existed during the last investigation and still exist today, and we'll demonstrate that through testimony.

With respect to the definition of the like product, it's our position that the bulk FCOJM and NFC constitute a single like product and that the relevant domestic industry is that which grows and processes oranges for production of those two forms of orange juice.

Our witnesses will demonstrate that growers and processors do not distinguish between oranges grown for FCOJ and those grown for NFC and that processors produce both forms of juice on the same lines of equipment until the point where the product is diverted either to the evaporator or to the pasteurizer.

These are simply forms of orange juice in bulk form, and I don't think that past decisions have really stated that bulk NFC, as we're discussing today, is truly a separate like product. I'm not sure it was ever under consideration. You have looked at single strength juice before and decided that that is a consumer product. That is something different, but we'll discuss today how the two products are made.

With respect to the issue of whether

Brazilian owned U.S. processors as related parties should be excluded from the industry for your injury analysis, we believe that the circumstances are appropriate to exclude them.

However, even if you decide to include those companies in the industry, we still submit that there's more than a reasonable indication of injury as long as you continue to evaluate the impact of imports on both the growers and the processors.

Even though there may be logical reasons to treat them the same for standing purposes and for how you treat them for injury analysis, there's no requirement that they be treated the same so if one party does get excluded for standing purposes it doesn't mean that it has to be excluded for injury analysis and vice versa. We'll be addressing this issue in more detail in the briefs, and we can discuss it later.

I'd like to move on to our testimony now with Mr. LaVigne.

MR. LAVIGNE: Thank you, Mr. Chairman and ITC staff. I appreciate the opportunity to be here today. My name is Andrew LaVigne, and I'm executive vice president and CEO of Florida Citrus Mutual based in Lakeland, Florida.

Florida Citrus Mutual is a voluntary cooperative organization whose membership consists of more than 10,400 growers of citrus fruit for processing and fresh consumption. Our membership accounts for more than 90 percent of all oranges grown in the United States for processing into juice.

The production of citrus in Florida -- that's the growing of oranges and the juice processing -- is the second largest industry behind tourism in our state. The industry contributes more than $9 billion in economic activity and employs more than 90,000 jobs in the state.

Those relying on the production of oranges for processing in this country include citrus growers, grove care workers, harvesters and haulers, nursery workers, manufacturers of fertilizers and other chemical inputs, machinery and equipment vendors, merchant banks, insurance vendors and the processors of U.S. grown citrus, as well as their many suppliers.

In addition, the production of round oranges for processing on over 600,000 acres returns a strong net benefit to Florida's delicate ecosystem and water supply.

The citrus industry has changed pretty dramatically over the last 15 years when we

experienced our last devastating freeze in 1989. Growers strived to recover from three devastating freezes to become more efficient and more productive while ensuring protection from future freeze events. This required extensive modifications to their production practices and in some cases moving citrus production further south in the state.

Over that same time period we saw a dramatic increase in the presence of processors either based in Brazil or with processing capacity in Brazil in our Florida processing marketplace. This increased presence placed additional pressure on the FCOJ price, thus impacting the domestic family-owned processors that have developed the industry in the state.

This has resulted in Brazilian processors owning roughly 50 percent of the Florida processing business today and essentially no citrus groves and controlling over 60 percent of the global orange juice marketplace.

As you'll hear this morning, this consolidation is not just happening in Florida. The Brazilian industry has now consolidated to four major processors controlling 80 percent of the global exports of orange juice. That consolidation has contributed to further control over the U.S. the EU

and the global orange juice market. In addition, in the last few years we've seen a movement toward greater control of the FCOJ futures market by the Brazilian industry.

When I was appointed to this position in 1998, it was understood that some imports of Brazilian product were needed from season to season to meet various needs of the U.S. market. You'll hear more about that this morning.

It was never anticipated though that the Brazilian processors would garner a majority interest in U.S. processing of FCOJ or that they would be bringing product directly to the northeast United States at the price levels we have seen over the last couple of years. It was never imaginable that Brazil would import NFC into the U.S. at prices competitive with NFC produced here in Florida.

These activities have led growers to further cut production costs and fund research into mechanical harvesting to reduce the cost of harvesting their fruit, reduce their costs of production. Even with the productivity gains, the continued decrease in grower returns has forced growers to evaluate whether they should stay in production. It has impacted their ability to get credit, and it's forced the sale of

several thousands of acres to either development or other uses.

Since the inception of the Florida Department of Citrus, Florida growers have funded a marketing and research program that developed a U.S. demand for orange juice and has funded research that developed the science behind frozen concentrated orange juice and not-from-concentrate juice.

More recently, some of those grower funds were also used to attempt to develop other markets in the world. While there have been minimal increases in those markets, there are still only two significant world markets for commercially processed orange juice, the European Union and the United States.

Although heavily subsidized, European citrus production has waned over the years as Brazil has penetrated that market often with sales below cost of production. Asian markets have some consumption growth potential. However, market logistics, high orange juice tariffs in Asia and the fact that Brazil and China already dominate the markets makes expansion by the U.S. industry a challenge.

Unlike many other U.S. agricultural sectors -- namely dairy and field crops -- the U.S. industry that grows oranges for processing does not receive any

production subsidies. The U.S. tariff on orange juice is the only form of assistance that our industry receives, and that is what makes a drastic downturn in wholesale juice and orange prices received by Florida's growers and domestic processors so devastating.

However, there are no government programs or funds available to buffer the far heavier losses we have sustained on account of dumped Brazilian product into the U.S. market. These losses brought red ink to our books long before the three recent hurricanes made landfall this last summer that's impacted this season's crop.

The continued price depression and suppression caused by dumped Brazilian juice threatens our industry's ability to recover from those hurricanes and any other natural disasters that may come our way.

I appreciate the opportunity to appear here today on behalf of Florida citrus growers and stand ready to answer your questions about our petition. Thank you.

MR. MCKENNA: Good morning. I'm Marty McKenna, president of Florida Citrus Mutual and an orange grower for the past 25 years. I currently grow

250 acres of citrus in Polk, Hardee and Highlands County and also manage an additional 500 acres of orange groves owned by others.

I appreciate the opportunity to come to Washington today to ask the Commission to find preliminarily what is all too obvious to the growers of Florida, that low-priced Brazilian orange juice is causing material injury, threatening the very existence of the grower industry in Florida.

I and other Florida growers adhere to all the laws and regulations imposed by the federal government. This includes the IRS, EPA, OSHA and other state and local regulations. Florida growers abide by the laws of the land. We ask you, the U.S. International Trade Commission, to ensure that the Brazilian citrus industry adhere to the trade laws of America.

Prior to the hurricane damage in crop year '03-'04, I and other growers were unable to show profit from growing oranges. We have not been in a position to project profits in the last two years, but only tried to recover the cost to grow, harvest and move our fruit to the processing plants.

On the average, it costs us 75 cents per pound solid to offset these expenses. This figure

represents a highly productive grove, which is efficiently rated carrying little or no debt. With returns last year in the 60 cent range we obviously were suffering a loss, making the beginning of the current season look pretty bleak.

Before the hurricanes, most projected returns for this year were very similar. Few growers were expecting to break even. This year, because of the damage of the three hurricanes in six weeks, returns have to be at least 90 cents per pound solid to break even.

According to USDA estimates, the State of Florida will produce 82 million boxes of oranges less than last season. Historically after a natural disaster like a freeze that reduced our crops, damaged or destroyed our trees, the price of juice and returns for our fruit went up substantially. This would permit us time to recover and the capital to replant or repair damaged groves.

At recent prices of 85 cents per pound solid and a decrease in production, we remain in a nonprofitable situation. This situation of low production, coupled with low prices, is very detrimental to the Florida citrus grower. At this point we are trying to decide whether and how much to

reinvest in our recovery efforts.

Since lenders need to see a reasonable projected return to guarantee loans, it is very difficult to obtain working capital. For instance, the Federal Land Bank requires floored, long-term contracts for fruit of at least 90 cents in order to obtain financing. For the past three years, these contracts have not been available to the Florida citrus grower. Few growers can take contracts for such prices to their banks.

As you know, the commodities future market also plays a role in how much is paid for juice and how much is paid for our fruit. The sheer size of the few Brazilian processors and their overriding presence in the United States market gives them unusual power to influence the futures market, which in turn directly impacts how much they or any other processor will pay for our fruit.

As you will hear from others, individual Brazilian processors have more frequently delivered significant volumes of juice at low futures prices and been able to draw down the market price by their own actions.

The Brazilians not only sell juice in North America, but they also buy oranges from Florida

growers. This practice of driving the futures price down allows the Brazilians to purchase Florida oranges at a lower cost.

Only two Brazilian processors account for 60 percent of the capacity of Brazil and 26 percent of the capacity in Florida. When a few Brazilian processors are both the seller of competing imports and the major purchaser of your product, it's hard to claim that the market price for fruit is solely about supply and demand.

Please recognize also that low prices have a longer term impact that can't be measured in the same season. Since our returns are tied directly to juice prices, a low price and high juice inventory means that we have to cut our input expenses which will affect our output and productivity in the long run.

Unlike many products you might examine, if prices for fruit are low we cannot simply shift crops, reduce our production volume, cut a shift or run the factory fewer hours. The factory is a tree which cannot be turned off for at least 25 years, but, like most businesses, we still have fixed costs per acre, and a low volume or low yield per acre means low or negative returns.

Two years ago we spent approximately $800

per acre, but dropped back to $600 last season due to chronic low returns and high increased juice inventories. This year we're spending as much as $1,000 per acre partially to offset hurricane losses and partially to make up for the corner cutting forced on us last year.

Production and cost are the same for oranges grown for FCOJ and NFC. Growers deliver these oranges to the processors who determine the ultimate end product.

With imports placing such a hard cap on our potential income after the hurricanes, it's no wonder that growers have to look more closely at selling to developers. It's not that all development property value keeps climbing. It's that the value of citrus producing property keeps declining because of declining citrus returns.

We citrus growers are proud of our heritage and tenacity. We expect bad years and losses from bad weather or bad luck. We've bounced back many times. We don't seek charity, but we also don't want to have our hands tied by unfair competition.

After the hurricanes, President Bush visited our groves personally to see the damage. When we told him that we would rebuild, he pledged, "I will also

ensure that Florida farmers are treated fairly on the global market and that no country takes advantage of citrus growers during this time of disaster."

We are just asking to be allowed to compete without the burden of artificially low Brazilian prices. I hope the Commission will agree that the Florida grower has been harmed and take the first step towards fulfilling the President's pledge.

Thank you very much.

MR. BEHR: Good morning, Mr. Chairman, members of the ITC staff. My name is Robert Behr. I am vice president of Planning and Product Services with Citrus World.

Citrus World is Florida's oldest processing company. It is a federated cooperative with 12 stockholder members representing about 1,100 orange producers. Citrus World processes oranges delivered by its member growers and packages both from concentrate and not-from-concentrate orange juice products under a number of branded labels.

Our growers are paid on the basis of prices that Citrus World receives for its product sales. During the past three years, last season in particular, the prices paid to our growers were extremely depressed. For most of our growers, the

price received for oranges has been less than the cost of production.

Our growers are very concerned that imports of Brazilian FCOJM and NFCOJ sold at less than fair market value are having an adverse impact on the prices that Citrus World receives for its products and the prices that Citrus World is able to pay to its member growers.

In my employment with Citrus World, I have numerous responsibilities in the planning and procurement area. This would include, among other things, analyzing supply/demand conditions of the orange juice market, assessing the balance between our member grower fruit production prospects and our sales forecasts, managing orange juice purchase requirements and planning and executing FCOJ futures market transactions to hedge procurement needs or to hedge an inventory position.

It should also be noted that I serve on the Board of Citrus Associates of the New York Board of Trade, which is the governing body of the New York FCOJ futures market.

As I mentioned, times have been difficult for Florida orange producers. During the 2003-2004 season, Florida growers received an on-tree average

price of $2.29 per box for processed oranges according to the USDA. On a per acre basis, grower proceeds from processors amounted to only $900 last season.

It cost Florida growers about $1,230 an acre to produce oranges for processing according to studies published by the University of Florida. As you can readily see, Florida growers lost $330 per acre, a loss of 37 percent per dollar of revenue, last season.

Extreme low pricing for bulk FCOJM and NFCOJ hurt Florida growers. FCOJ futures prices reached a 27 year low during June 2004, which is the lowest ever on an inflation adjusted basis.

Low futures prices have had an adverse impact on the cash market for bulk FCOJM and NFCOJ, adversely affecting wholesale prices for all packaged orange juice products. Ultimately, the impact of low FCOJM and NFCOJ prices pushed grower prices to levels well below the cost of production.

Since Citrus World is cooperatively owned, the effect of low FCOJM and NFCOJ prices passes through to its member growers. Nonetheless, Citrus World is being adversely affected by the depressed pricing conditions.

Our business is dependent upon a stable supply of member fruit, and in recent years we have

seen many member growers go out of business because of the depressed pricing conditions. When our growers are threatened by low prices caused by unfair pricing, then it has a serious unmitigated impact on our growers' future and on the future of Citrus World.

Because of its dominant size and its export orientation, there is little doubt that Brazil wields extraordinary pricing power in the world orange juice market. During the past three years, Brazilian FCOJ exports to the U.S. have well exceeded the amount needed by the U.S. market and have caused U.S. stocks to reach record levels.

It is often argued that Brazil exports FCOJ in to meet specific U.S. market needs such as improving juice color or viscosity. However, a significant volume of Brazilian exports to the U.S. were simply delivered into the FCOJ futures market at a time when the U.S. market was already well over supplied.

As indicated in the petition, Brazilian FCOJM was delivered into the FCOJ futures market over the past two years at prices less than fair market value and has contributed to the historic low prices observed for FCOJM and FCOJ products in the U.S. market.

Generally speaking, a futures market is used as a hedging and pricing mechanism and not a market where one delivers or takes product on a routine basis. During the past two years, Brazilian FCOJM was imported directly into the U.S., apparently with the sole purpose of being delivered into the FCOJ futures market.

During this period, sellers of FCOJM were not only using the futures market as a hedging mechanism, but also as a means to import Brazilian FCOJM and deliver product into a market that was already awash with burdensome inventory.

The routine delivery of Brazilian FCOJM into the FCOJ futures market since January of 2003 demonstrates willful intent to deliver product at less than fair market value. Since a futures market can be considered a market of last resort because there are many buyers and sellers, it served as a convenient vehicle to deliver Brazilian FCOJM with impunity.

The impact of delivering imported FCOJM into the futures market helped to drive FCOJ futures prices to record low levels. There can be no other conclusion. The effect of importing and delivering excess Brazilian FCOJM helped drive FCOJ futures prices to record low levels and cause prices of

domestically sold FCOJM and NFCOJ to follow suit.

It should be noted that the delivery of imported FCOJM into the futures market over the past two seasons was not required just because the sellers had a short position in the marketplace. Even though the sellers may have initially sold futures contracts to protect FCOJM inventory value, there was no market requirement to force the sale or to deliver FCOJM during the delivery period of the contract.

Generally speaking, cash market price for 100 percent Brazilian FCOJM has carried a significant premium over FCOJ futures market prices. As such, it would have been prudent for the sellers to have reversed the futures position and not delivered FCOJM into the futures market at less than fair market value.

Delivery of Brazilian FCOJM into the FCOJ futures market is but one example of product that is being sold in the U.S. at less than fair market value. While sellers of Brazilian FCOJM have every right to use the FCOJ futures market as a hedging vehicle, its use as a mechanism to deliver product at less than fair market value raises serious concerns.

Such activity has contributed significantly to the financial losses being sustained by our member

growers, as well as the adverse impact it is having on Citrus World's business model.

I want to thank you for your consideration of this matter and look forward to answering any questions you might have.

MR. LUCAS: Thank you. Good morning. Mr. chairman, members of the staff, I am Charles Lucas. I'm vice president of Sales and Fruit Procurement for Southern Gardens Citrus. We're located in Cluston, Florida.

I've been employed in the orange juice industry for over 25 years in various capacities and with Southern Gardens for the past 10 years. Southern Gardens owns 30 acres of orange groves and also purchases approximately 60 percent of its fruit needs from other growers in the State of Florida. We produce FCOJM for the processing. We are also the largest producer of non-branded bulk NFC in the State of Florida.

Our experience in the citrus business has been similar to what you're hearing from the other growers and processors today. Although we have implemented many productivity and cost saving measures in our groves, our cost to produce fruit, the raw material, has exceeded the season average futures

price the last two seasons.

Likewise, our processing operations have undergone severe challenges in the last two years as bulk prices have hit new lows and returns have fell below our cost resulting in tremendous expansion of inventories over the 2003-2004 season.

Our cash profit on FCOJM production, even without allocating general expenses, depreciation and insurance for that product line have been barely at break even levels. On a consolidated basis, we have seen earnings decline by over 20 percent over the last three years.

We purchase some Brazilian FCOJ, like most domestic producers, including those who are not owned by Brazilian processors, so that we can maintain some degree of competitiveness with the very low prices that have prevailed in the market for some time.

Despite our efforts to adapt to the chronically low price and return environment, however, Southern Gardens has been seriously injured and has not been able to recoup our investment funds that it has spent on a new plant and groves prior to these price declines.

While Brazilian FCOJM has been a major factor in the U.S. and European market for some time,

it is only recently that Brazilian NFC has appeared in sufficient volumes to affect prices. The major technological breakthrough was the development of large aseptic storage tanks to handle bulk pasteurized NFC so that it could be transported over long distances and stored for some time until the purchaser needed to draw down the supply as sales required.

Until these improvements, Florida processors were the primary supplier of NFC in the United States, which was prohibitively expensive to transport great distances and not easily stored and was the only product remaining where we in Florida could achieve some kind of cost recovery.

Over the past few years, the NFC market has been growing at a rate of approximately 10 percent annually while the overall market for orange juice has been stagnant or briefly declined. However, NFC is a product that shows the greatest opportunity for growth so the Brazilian presence in this market is an important factor to us.

When Pepsico bought the Tropicana Company a few years ago, the NFC growth rate was projected to be higher, and there was a temporary shortfall in the fruit production in Florida so Tropicana arranged for Citrosuco to supply some of its NFC requirements for

the European markets. Soon after, Cutrale and Citrosuco followed suit, and both began shipping volumes of NFC not only to the EU market, but to the U.S. market as well.

Since there is a strong correlation between the price of FCOJ and NFC and also a strong relation between the price of FCOJ and the commodities futures price, whatever our Brazilian competitors do in the FCOJ futures market affects the NFC prices as well.

A little bit about the production. NFC is produced from the same oranges using the same equipment as FCOJM. We don't choose which fruit goes into the end product until it reaches the yard. After the juice is extracted from the fruit it is sent either to the evaporator to produce FCOJM or to a pasteurizer to produce NFC.

NFC is delivered in 5,600 gallon tankers, and the customer will run it into a packaging line. They might also add citrus oils, calcium or other elements within the limits of the product standards of identity.

Likewise, when FCOJM is delivered to a customer it is reconstituted through the addition of water. Some of the same elements might be added as packaging of NFC. Alternatively, FCOJM can also be

processed into a consumer strength concentrate which can be reconstituted in an approximate 3:1 water to concentrate ratio, although this form of consumer product has been on decline for several years.

We purchase fruit from growers either on a spot basis or under participation contracts with a floor price. The floor is designed to protect the grower for some of the losses they would suffer if the prevailing fruit price at the time of delivery is exceptionally low. However, the floor is usually only at or below their cost of production. On such contracts, profits are only realized if the juice price is sufficient to pass on additional returns to the grower.

After last year with the significant oversupply in the market and extremely low pricing by the Brazilian suppliers, especially in the futures market deliveries, the projected return for growers was so low that the commercial banks were not placing any operating loans for many of the growers, and some had to exit the business. With low projected returns, the grove land values were low enough that many growers had to look to alternative land uses if possible or simply sell their land.

As a result of the recent hurricanes and

canker outbreaks, Florida's citrus production has hit a 12-year low and yet futures prices are below the cost of their production for an integrated grower/ processor. Without any further price response, we will see many more growers and what few domestically owned Florida processors that are left go out of business.

Thank you very much for your time. I'll be happy to answer any questions. Thank you.

MS. WARLICK: My name is Amy Warlick. I'm an economist with Barnes, Richardson & Colburn, counsel to Florida Citrus Mutual and the other petitioning parties in this investigation.

We have already heard firsthand accounts by U.S. growers and processors of the financial havoc created by the Brazilian orange juice industry. I would like to outline for you how this rapidly growing industry has evolved from a helpful complement to the U.S. industry into an oligopolist world player and devastating force to our industry.

It is rare for the Commission to investigate a global industry as polarized as the orange juice industry where there are only two major world players, Brazil and the United States, and two major world consumers, Europe and the United States. It is

equally rare to find respondents that are so concentrated and, therefore, hold so much economic power. Currently, Brazil produces 83 percent of the world's orange juice exports, and the three Respondents here today, -- Citrosuco, Cutrale, and Louis Dreyfus -- in addition to Citriveta, control roughly 90 percent of Brazil's orange-crushing capacity and 100 percent of Brazil's bulk orange juice transportation system.

The last time the Commission investigated dumping in this industry in the late 1980's, there were 14 Brazilian processors. Now, there are only five much larger processors.

Chart 1 shows the impressive history of Brazil's orange production. At the time of the U.S. industry's most recent significant freeze, December 1989, Sao Paulo produced roughly 200 million boxes of oranges, some of which was actually needed by the U.S. market to make up for U.S. shortfalls during those years. However, within the next decade, Brazil's production doubled and began to swamp that of the United States as well as other world producers.

When global prices rose, Brazil produced more, and when global prices fell, Brazil produced more.

While tree diseases management has proven to

be a significant challenge to the Brazilian industry and government, it is clearly a challenge that Brazil has met with tremendous success. As numerous and damaging as the Brazilian tree diseases have been in recent years, citrus canker, citrus variegated chlorosis, and citrus sudden death, Brazil has nonetheless continued to expand its planted acreage and orange trees year after year without fail, as you can see in Chart 2.

(Pause.)

MR. CARPENTER: We will make about a dozen or so copies for you and bring them back.

MS. WARLICK: Okay.

U.S. FCOJM imports from Brazil rose by 36 percent during the period of investigation while NFC imports rose some twelvefold. You can see this in Chart 3. Okay.

Brazil's share of the U.S. FCOJM market grew from 11 percent to 17 percent, and its share of the NFC market grew from 1 to 4 percent. Despite the U.S. Customs tariff on Brazilian orange juice, Brazil has been able to push U.S., as well as duty-free Mexican and Caribbean juice, out of the U.S. market because it is selling at prices well below fair market value.

Chart 4 shows a comparison of the unit

values of FCOJ from Brazil and Florida wholesale FCOJ prices.

Brazilian export data show that during the period of investigation, Brazil sold FCOJ and NFC into the United States at prices well below its prices to any other country. Charts 5 and 6 show the Brazilian FOB export unit values for FCOJ and NFC compiled by the Brazilian Department of Foreign Trade and reported by USDA late last month.

Andy, can you go back to five and then again to six so that you can see the legend on the bottom, those countries all correspond with the column directly above them, so you can see on the left is the United States and how much lower that price is than to any other country Brazil is exporting to.

Brazil's constant downward pressure on U.S. prices is best reflected in nearby futures contract price of FCOJ, which fell to its lowest level in 27 years this past summer. Chart 7 shows the fall over the last 15 years.

Futures prices are one of the most accurate measures of the wholesale price of FCOJ in this country. As you can see in Chart 8, low U.S. wholesale FCOJ prices automatically translated into low U.S. processing orange prices. The on-tree,

meaning preharvest, price of early, mid-season, and Valencia oranges has fallen dramatically in tandem with wholesale orange juice prices during the POI. The broken lines represent prices. The solid lines represent costs.

At these price levels, growers can no longer cover their costs. Growers of early and mid-season varieties have not been able to recover costs for three years. Now, in marketing year '03-'04, Valencia growers cannot recover their costs either.

Chart 9 shows the result of this financial crisis. U.S.-bearing acreage shrunk by 5 percent during the period of investigation as many growers were forced to abandon their groves. By the way, these estimates of bearing acreage were made prior to the damage caused by this summer's hurricanes, so the losses reflected on this chart were financially motivated, not the result of nature.

According to the University of Florida's annual land value surveys, between May '01 and May '03, the value of mature orange groves in both south and central Florida fell by 7 percent.

Despite the low orange prices, however, processors of U.S.-grown oranges can no longer cover their costs either because wholesale prices are just

so drastically low. (See Chart 10.) It costs Florida processors in excess of 20 cents per pound solid to make FCOJM or NFC. However, during the POI, the futures prices dragged Florida wholesale prices so low that margins were continually squeezed until '03-'04 when wholesale prices fell well below the processing cost plus the delivered end cost of oranges.

Many processors could not justify selling their juice at such a loss and were forced to enter an additional 101 million single-strength equivalent gallons of their FCOJM production into costly storage. This can be seen in Chart 11.

U.S. orange juice ending inventories climbed 21 percent to a record high in '03-'04.

Typically, the laws of supply and demand will regulate prices a little better. As juice prices fall, consumers begin consuming more juice until juice prices stabilize at a higher level. However, in this unique industry, consumers have not enjoyed the benefits of cheap imports.

Chart 12 is very important to understand. It shows that at some point around 1999, retail orange juice prices started moving upwards and independent of wholesale prices, which began their fall.

So as wholesale prices fell, juice blenders,

reprocessors, and retailers all benefitted but did not pass these benefits along to consumers. So despite the marketing efforts of our industry, consumer demand has remained stagnant and even briefly dipped in response to the popularity of low-carbohydrate diets in this country.

As you can see, the natural economic counterforces that usually buffer prices are nonexistent in this industry, as the precipitous fall in the U.S. orange and wholesale juice prices demonstrates.

As if the current situation was not difficult enough, the '04-'05 orange crop in Brazil is expected to be one of the largest on record, producing 467 million boxes of oranges and 1.3 million metric tons of FCOJ. While Brazil's orange production will bump up and down in response to bumper crops, which are typically followed by tree-recuperation periods, Brazil's orange and orange juice production can be expected to climb well into the future. Unlike most agricultural producers, Brazil still has prime agricultural land to expand onto and is doing so at remarkable speed as it replants groves in southern Sao Paulo and Perina state. Brazil also has plenty of excess processing capacity as well, as its current

capacity utilization has been estimated at only about 74 percent.

However, the most immediate threat to the U.S. industry does not come from Brazil's future agricultural expansion; it comes from the very real potential for trade diversion of Brazilian juice from European and Asian markets into the U.S. market. Even though U.S. FCOJM and NFC imports from Brazil have expanded by 53 percent during the POI, Brazil still only exports 12 percent of its FCOJ and 23 percent of its NFC to the United States. So there are hundreds of thousands of metric tons of juice that could be shifted into the United States at any time, and there are a number of incentives to do this, among them, high Asian and EU tariffs.

While supply contracts may slow this process in the near term, only a portion of Brazil's exports to Europe and Asia are committed through contracts, and these contracts are typically only three years.

Orange juice is a commodity. Beyond matching needs for color, brix, and acidity, there is little red tape involved in switching suppliers, so the potential for trade diversion is a very real threat to the U.S. citrus industry.

Not only have imports from Brazil depressed

U.S. wholesale prices in recent years; they have suppressed them as well. Our growers will recall with great discomfort the last natural disaster to strike the citrus industry: the orange crop freeze of December 1989. That freeze sent the price of the nearby futures contract up by 53 percent, from $130 per pound solid in November '89 to $198 percent pound solid in February 1990.

The chart above shows what I believe Mr. Dunn explained is a dramatic turnaround in prices. If you see this pink line on the bottom, this is what hurricanes did. This is how prices have been suppressed. I would not call that a dramatic turnaround in prices. It barely climbed to 80 cents per pound solid.

So when three consecutive hurricanes hit Florida citrus country head on, devastating hundreds of acres of Florida groves and causing USDA to forecast the smallest Florida orange crop in 13 years, futures prices rose only very modestly and very briefly. The U.S. citrus industry has become so overwhelmed with dumped Brazilian orange juice that not even the worst-case scenario was enough to raise orange juice prices above 80 cents per pound solid for more than a year.

I wanted to address one more comment that Mr. Dunn had made about next year's crop in Brazil coming down so significantly. I've already shown you how high the record current year is expected to be. The early estimates on next year say that that crop will come down by 14 percent in terms of oranges and 20 percent less juice. However, those familiar with Brazilian orange crop forecasting know that the early forecasts almost always significantly underestimate the actual results.

This chart here shows how nine of the last 11 early orange juice production forecasts have underestimated the resulting orange juice production by an average rate of 10 percent.

We don't know why there is consistently underestimation. We can only guess that this is done in an effort to manipulate futures prices. Whatever the reason, the result is that it disadvantages U.S. growers and processors who harvest and process their oranges just about the time when the actual large volume of Brazil's impending crop is finally announced, thus depressing futures prices.

Thank you for this opportunity to give comments, and I welcome any questions.

MR. McGRATH: And that completes our panel

of witnesses for direct presentation. We are all available for questions now, and we welcome your questions.

MR. CARPENTER: Thank you very much for your testimony. For the record, I would note that Charts 1 through 12 will be incorporated in the record, and we'll make sure that those are attached to the transcript. You also put up two or three other charts on the screen --

MS. WARLICK: Two other charts, and I'll provide those as well.

MR. CARPENTER: -- two other charts. Do you have paper copies of those with you?

MS. WARLICK: Yes. I have paper copies.

MR. McGRATH: We can provide that now, I suppose, so you can make copies.

MS. WARLICK: Yes.

MR. CARPENTER: If you could provide those to the court reporter, we'll also make sure those are attached to the transcript.

Okay. At this point, we'll begin the staff questions with Ms. Haines.

MS. HAINES: Betsy Haines, Office of Investigations. Is there any cyclical nature to the industry with the trees, the age of the trees? I may

have missed some of your testimony when I left, but I apologize.

MR. McGRATH: I think what I'll do with the questions, unless you have a specific person, we'll try to direct to whoever seems appropriate, and then others might join in because everybody's experience sort of overlaps here, but perhaps Mr. McKenna could start with that.

MR. McKENNA: By "cyclical nature," you're talking about production?

MS. HAINES: Well, sort of the age of the trees.

MR. McKENNA: The age of the trees?

MS. HAINES: Yes, or any production cycle that you might want to --

MR. McKENNA: We do have some information concerning Brazil in Chart 2, the age of their trees and the tree numbers that they have. The latest tree numbers -- tree census that the State of Florida does every two years shows tree numbers actually coming down in Florida, and I think that's directly attributed to the value of the product that we're growing.

MS. HAINES: And are there a lot of new plantings being made?

MR. McKENNA: In Florida?

MS. HAINES: Yes.

MR. McKENNA: No. The tree numbers are going down, which includes any new trees planted in the ground.

MS. HAINES: Okay.

MR. McKENNA: It includes both mortality and the trees, but the net effect is a negative, is a decline in the tree numbers.

MS. HAINES: The problems that have been discussed about the disease in Brazil; the Florida industry has so far not had to deal with any of the diseases that have been listed that the Brazilians have had to deal with.

MR. McKENNA: We deal with canker.

MS. HAINES: Okay.

MR. McKENNA: That is also in Brazil. We do have many of the vectors that are bringing disease that is in Brazil that we haven't had to confront yet, but we do have the vectors recently introduced, so we don't know.

MS. HAINES: Okay.

MR. BEHR: Betsy, could I follow up on one question that you made?

MS. HAINES: Sure.

MR. BEHR: I think you asked about the cyclical nature of the citrus tree.

MS. HAINES: Yes.

MR. BEHR: I'm not sure exactly where you were going with the question, but I think that basically once a tree is planted, it takes about three to four years for a citrus tree to bear fruit, and then it increases in productivity perhaps to about age 10 to 15 years of age. In Florida, trees can live to 25 years or longer, so just to fill that in.

MS. HAINES: Okay.

MR. BEHR: On a year-to-year basis, you can see fluctuations in the productivity based upon climate and Mother Nature, what have you.

MS. HAINES: Right. Okay. Thank you.

So the primary constraints to the production; what would you consider the primary constraints, obviously weather but also production-wise, the machinery, processing, that sort of thing?

MR. BEHR: Just as a preliminary comment, I guess we should distinguish between the constraints on how much of an output there might be in a given year from the grower's standpoint and how much production that a processor might produce.

MR. LUCAS: Just from my perspective, the

primary constraint is economic. With these low prices, we've got negative cash flow. I think, as Marty said, we can't recapitalize our groves after the hurricane. We just don't have the money, and so I think, as Marty said also, if you're in farming, you're always combating diseases and weather, and we're doing a lot of things that I think we can overcome those, but we can't overcome these low prices in the marketplace. We simply don't have the money to replant our farms.

MS. HAINES: Okay. Are there any trends towards vertical integration, a lot of the processors that own their own acreage?

MR. LUCAS: We do. We own, like, 30,000 acres, and we probably supply our own processing plant with about 40 percent of its fruit requirements, and then we purchase the balance, 60 percent, from other growers, so there's integrated grower/processors like ourselves similar to Bob. His company is a co-op, so actually the growers own the company. That's an integrated operation as well. Right, Bob?

MR. BEHR: Yes. In fact, our structure is that we're integrated from the grove all the way to the consumer with our branded product line, but you have other different organizational structures in our

industry as well where you do not have the vertical integration from grower through to processor and beyond.

MS. HAINES: But there is no real trend. It's sort of a static situation.

MR. BEHR: Yes, I would say. I'm not seeing a real significant trend in the changes in the market structure within our industry. Surely, there is consolidation, and there are processors going out of business, and there are growers going out of business, as Marty had indicated, because of the economic conditions that we face today, but in terms of the way we're organized from grower to processor, there haven't been significant changes in the past couple of years.

MS. HAINES: Okay.

MR. McGRATH: If I could just add one point. Since the last time the Commission looked at this, there has been sort of a trend in the opposite direction if you look back over, say, 20 years or so. The industry originally started off as more dominated by co-ops, by integrated grower/processor organizations, and that started to split off sometime in the seventies to become more development of growers and processors not necessarily being integrated but a

combination within the industry of some cooperative and some independent processors. Some of the operations that have been purchased by Brazilian processors; some of those in Florida were at one time part of a co-op operation. So there has been a reverse trend away from that vertical integration.

MS. HAINES: Is there much blending going on between the Brazilian juice coming in with American product?

MR. LUCAS: Depending on the customer specifications, there is blending to basically whatever your customer wants. Some customers will have certain quality specifications that you may use the Brazilian, or you may not. Some customers have country-of-origin requirements as well under the label, so if they said, "Yes, you can use a Florida-Brazil," or if they said, "No, we want 100-percent Florida product," so it's really driven by the customer.

MS. HAINES: What sort of quality issues -- why would they want the Brazilian product blended in?

MR. BEHR: I would like to just back up a second and basically make the point that the U.S. market historically has been a net importing market where we actually need Brazilian product. Exports

need to come here to satisfy our domestic requirement. The fact that a company might bring Brazilian product in for blending is really to satisfy the fact that we have a shortfall, and that's really the concern that we have as an industry, is that when our market is short, and we require product, if the Brazilian product comes in in excess quantities, it lowers prices, and that's what has happened to us.

It can be blended with Florida juice. It's not a requirement, but we bring Brazilian juice in because we need the volume, and it is used as a blending stock in that regard.

MS. HAINES: Okay. That's all I have at the moment.

MR. CARPENTER: Mr. Goldfine?

MR. GOLDFINE: Good morning. My name is David Goldfine with the General Counsel's Office.

Before I begin my questions, I would just like to let you know that if you decide that any of it calls for a BPI, any of your answers call for some type of proprietary information, we want to avoid disclosing that here, so please don't hesitate to let me know, and you can always put that in your post-conference briefs.

I wanted to start with some like product

questions, and I guess it would be helpful to also hear from the industry witnesses especially on some of these points.

I understand you are -- arguing about one like product, and I think Mr. Lucas may have touched on some of the factors, but it would be helpful, you know, to go through kind of each of the factors and understand your argument a little more clearly.

On physical characteristics and uses, page 48 of the petition states that the only significant physical difference between FCOJM and NFC is the level of concentration as measured by degree brix. So my question, just to be clear for the record, is that the only difference at all we're talking about here between FCOJM and NFC, the brix level?

MR. LUCAS: It would be the brix level, as you mentioned. The only other difference would be, I think, as I mentioned, the manufacturing process. The FCOJ will go through an evaporator. The NFC, where there is no water taken away, will go to a pasteurizer, so that would be the only difference. You break the stream from a manufacturing process as to how you heat treat the product.

MR. GOLDFINE: And besides those differences, they are identical.

MR. LUCAS: Correct.

MR. GOLDFINE: What about the taste of the flavor or the texture?

MR. LUCAS: That's, hopefully, the advantage of the manufacturing process. You start with the same fruit, but with the NFC there is less heat treatment. There is no water taken out of the fruit, so, in our opinion, the manufacturer's NFC keeps more of the original fresh notes of the original orange itself. So there is really nothing added to it actually; it's less done to it than the evaporation process. That's less heat treatment basically and no water taken away.

MR. GOLDFINE: Okay.

MR. McGRATH: If I could just add, obviously, the NFC and the FCOJ physically don't look like the same product. From the processor's standpoint, I think what we're talking about here, you can see pretty much that a bulk processor extractor looks at these products as -- they are represented to them as orange solids, and there is more water or less water.

The NFC product may be, if you're trying to find the distinctions, might be a step closer to being a consumable, finished, consumer product. It depends on how much processing a reprocessor is going to do

when they package it. When it comes out, the bulk NFC is not, in itself, the final product that then a consumer drinks directly, just as the FCOJ is not.

They both are treated as a producer product that then goes to another reprocessor, who will, on the FCOJ side, they will add water and some other elements, and on the NFC side, they may add other elements or not. But then they both go into a packaging line and a packaging operation.

So just to clarify, what we're saying is that essentially they are the same product from the standpoint of the producer. From the grower, obviously they look at the same fruit that goes in. But they are very similar because the core of the product is the orange solids.

MR. GOLDFINE: Okay. On interchangeability, just so I understand this, I guess my question is, why are they interchangeable, and to follow up on that, what I really mean is are FCOJM and NFC interchangeable at the first level of sale? So if a reconstituter or blender is seeking FCOJM, would it accept NFC as an interchangeable substitute, and do purchasers typically buy both FCOJM and NFC, or do they tend to purchase one over the other more often?

MR. McGRATH: Well, I think, obviously, they

are treated differently for different purposes. Somebody that's running an operation to reconstitute orange juice and sell an orange juice from concentrate is not going to be looking to buy NFC, and NFC is going to be sold at a different price. So there are some distinctions between them. We're not trying to say they are identical products in all respects.

We think that they are very similar in many respects, and when you look at all six of these elements here, you'll see, in some cases, it makes sense to be treating them as the same like product, especially economically from the standpoint of production and the common manufacturing facilities, how the inputs are produced and accounted for. But I don't think we could say that they are treated as completely interchangeable by the producer of the bulk product.

MR. LUCAS: Also, and we have done this, if, for some reason, you have NFC product, and for whatever reason, whether it's quality or sales or something, you can convert that to FCOJ, and we've done that. We just take it out of the tanks, run it through the evaporator, and it becomes FCOJ.

MR. BEHR: From a consumer perspective, often you'll see consumers switch back and forth

between an NFC product and a from-concentrate product based upon a product being on sale in a given week. So I think, even at the consumer level, there is a high degree of substitutability between NFC-based products and from-concentrate-based products.

MR. GOLDFINE: When you say "consumer," you're talking about --

MR. BEHR: You, you and me going to the store and making a decision to buy an NFC at retail versus a from-concentrate at retail. So, effectively, I think it supports the concept that the products are somewhat interchangeable.

MR. GOLDFINE: Okay. Why is NFC priced higher than FCOJM?

MR. LUCAS: There is a lot more cost in the storage. Since you're not concentrating it to a 65-degree brick concentrate like FCOJ, you're storing it at what we would call "single-strength 11.8 brick," let's say, would be a target, so you need this huge volume of storage capacity. At Southern Gardens, we have 56 million gallons of NFC storage, so you have this huge capital to build all of these storage capacities.

So you've got, one, a lot more capital invested in storage, and you're transporting single-

strength as well, so when you're trying to get it to the market, you're sending it up here to Washington, D.C., to someone who is going to package it, your freight costs and your distribution costs are a lot more higher. Those are the primary reasons.

MR. GOLDFINE: Okay. Can anyone speak to the issue of why also NFC has seemed to be gaining market share over FCOJM? Why is that?

MR. BEHR: I think that Charlie hit on the point earlier. I believe, more than anything, it's the consumer perception that the product goes through less of a processing step. You're not taking the water out of NFC and then adding it back for retail consumption, and I think the consumer perception probably has driven that trend more than anything.

But the point that I made earlier: Despite the fact that there is a trend growth in NFC, there is still a high degree of substitutability between not-from-concentrate products and from-concentrate products at retail level.

MR. GOLDFINE: Okay. So I understand as well, the petition indicates that round oranges are the principal types of oranges to make both FCOJM and NFC. Are FCOJM and NFC made exclusively from round oranges, or are there other types of oranges, like

specialty oranges, that go into making both of them?

MR. BEHR: Within the federal guidelines, you can add specialty varieties up to a maximum of 10 percent tangerine-type varieties, but round oranges are the primary make-up of both NFC and FCOJM.

MR. McGRATH: And if I could add, for the most part, unless somebody is trying to make a particular NFC product to advertise that it's got a certain type of variety in it, for the most part, the oranges are purchased, as Mr. Lucas testified, and the decision as to which product they go into really isn't made until it's in the processing line.

MR. GOLDFINE: Okay. This may be for you, Mr. McGrath. Just so I understand, does the scope here include orange juice sold at retail?

MR. McGRATH: No. This includes only bulk product that's manufactured by extractor processors for sale or delivery to a packaging operation.

MR. GOLDFINE: For the like product, we shouldn't include any orange juice sold at retail.

MR. McGRATH: No. We're not asking that that be included. There have been questions, I know, raised about the different levels of concentration. There is a consumer level of concentration at 42 brix. It's not simply a different level of concentration.

There is more to it than that. The 42-brix product is one that is usually a finished, packaged product for the consumer to then purchase as the finished product and then reconstitute on their own. We're not intending to include any other level of concentrate or any particular single-strength product that's sold at retail. There is a separate industry that's involved in reprocessing and packaging products that the extractor processors purchase and sell to that industry.

MR. GOLDFINE: Okay. I guess your answer would be the same with respect to organic orange juice.

MR. McGRATH: I know that question has been raised now, and we were discussing it yesterday, in terms of the organic product -- do you want to talk to that?

MR. GOLDFINE: If you could just tell me what organic, what it is.

MR. BEHR: "Organic" really relates to how the fruit is grown, I think, if it's grown organically or not. We currently do not use organic fruit in our operations. There may be some operations that do use organic fruit, but it would seem to me that organic fruit really describes the way in which the fruit --

the horticultural practices that a grower might use in delivering fruit to market.

MR. McGRATH: I think we have to look at it a little bit more to take a position as to whether organic product is included or not. I'm not sure what the organic product is. I know there are suggestions about possibly either excluding the product from the scope or excluding it from the definition of the industry, and until we get a better handle, I guess, on what it is.

These gentlemen are not in that organic product business. It seems that if the fruit is grown in a certain way, but it's the same variety of fruit, it's just different cultivation methods, it probably should be considered part of the industry, but in terms of if the scope included an imported organic product, whether that really has any impact, our immediate reaction to that is it probably does not, but we wanted to take a closer look at it and give you a position in writing.

MR. GOLDFINE: On FCOJR, just so I understand it, the petition states that FCOJR is typically made from FCOJM and NFC. Is FCOJR ever made directly by extraction without first becoming FCOJM or NFC?

MR. BEHR: When you say "FCOJ," FCOJ for retail consumption?

MR. GOLDFINE: Yes.

MR. BEHR: Typically, the processor is going to concentrate their juice into FCOJM before it's packaged into a retail product.

MR. GOLDFINE: And are you aware if it's ever made directly without doing that?

MR. BEHR: I suppose it's possible, but I think that that would be a very rare circumstance.

MR. GOLDFINE: Okay. With respect to NFC, what additional steps are there, if any, in the production process for NFC between the time when it's stored in the drums and barrels until it's put into the half-gallon containers for retail? Is this just a matter of packaging, or are there any manufacturing steps?

MR. LUCAS: The big difference, I think, in some of the technology, I think, as we mentioned, is the NFC goes through a pasteurization process, and then it's stored aseptically. So it's stored in these million-gallon tanks that we have, so you store the juice aseptically. And then once the customer calls for a tanker of juice, which holds 5,600 gallons, you unload it onto a tanker, truck it up to Washington,

D.C., or wherever, and the packer puts it in his packaging line.

The difference is, again, compared to FCOJ, is the storage technology and no water taken out of the NFC. Those are probably the two main issues. Other than that, like I said, it's very similar.

MR. GOLDFINE: Okay.

MR. McGRATH: Just to add to that, though, I think, as Mr. Lucas testified, it's possible to add some elements to that. When the processor buys the juice and packages it, they may add certain limited amounts of elements to that.

MR. LUCAS: Correct. They will maybe add additional oils for flavoring, or they will add calcium, or they will add pulp, depending on their different products they think their consumers are looking to purchase.

MR. GOLDFINE: One other question on like product, and this may be for the post-conference briefs, but the petition states, on page 51, that FCOJM and NFC are sold to the same intermediaries, including remanufacturers and packagers. This may call for BPI, but could you please identify the top five largest purchasers for both FCOJM and NFC maybe in your post-conference briefs?

MR. McGRATH: We can do that. I think some of them are pretty common knowledge.

MR. GOLDFINE: The idea -- the broader question I'm getting at is, are the top purchasers the same for both products?

MR. LUCAS: Yes. I would think the top purchasers would be, yes.

MR. GOLDFINE: Okay.

MR. McGRATH: But we'll list them. To the extent that we can put our minds together here for what we think are the top five in the industry, we can certainly do that.

MR. GOLDFINE: Okay. I think, on the domestic industry now, this was touched on by one of the witnesses, but I wanted to just ask about it. Are the individual orange growers or orange juice processors dedicated to FCOJM versus NFC, and if not, who decides which application a particular orange will be used for, the grower or the processor?

MR. LUCAS: It's pretty well determined by the processor. Basically, you buy the fruit, and you typically buy the fruit on a varietal basis, -- round oranges, early mids, Hamlins, Valencias -- and then once the fruit comes to our yard, as the processor, we'll determine which stream of fruit. It goes

through the same extraction process. One line will then, after extraction, go to the NFC line; the other one will go to the FCOJ evaporator line. Sometimes you could, in theory, take the same fruit off the same trailer and put it in two different streams, one to the FCOJ and one to the NFC. So it's really done by the processor.

MR. GOLDFINE: I think I understand your view that your position is that we should count all growers and processors here in the industry. Is that right?

MR. McGRATH: That's correct.

MR. GOLDFINE: Including growers and processors outside of Florida like California or Arizona?

MR. McGRATH: If there are growers who are growing round oranges for processing outside of Florida, they certainly would be counted. Our position, though, is that there are very few of them, if any. All of the industry outside of Florida is producing varieties for fresh consumption. Some of what they produce -- this is on the growing side -- some of what they produce goes into orange juice, and the producer of orange juice outside of Florida would be covered as part of the industry because they are

producing the orange juice.

But the grower is only delivering that fruit to them -- I believe I'm correct -- as a residual -- it's an elimination from the product that they are actually growing for the fresh market, and they determine, upon growing it, upon picking it, that it's not appropriate for the fresh market, so they are looking for a place to send it as a residual use.

I don't think there are any growers outside of Florida that we would say are producing for processing.

MR. LUCAS: Yes. From our interaction and relationship with California, Arizona, and Texas at different levels, their production is almost exclusively for the fresh marketplace, as Mr. McGrath said. The juice that is produced in those states is a secondary market for those products, but it's grown for 100 percent to go to the fresh market, and then eliminations, as they are called, that don't meet the standards for the fresh marketplace, then move that product into the processed.

MR. GOLDFINE: A few questions on whether the growers should be included in the definition of the domestic industry, and this may be something you want to put in the post-conference briefs, or you have

your initial reaction here, however you would like to handle it.

Assuming that it's one like product, how should the Commission define the raw agricultural input and the processed agricultural product under 19 U.S.C. 1677(4)(3)(2), and should the Commission find that the substantially or completely devoted standard is satisfied?

MR. McGRATH: I'll start with that, I think, maybe Marty will want to add to it.

The definition of the raw agricultural input is round oranges, which are oranges that are pretty well accepted as being oranges. There are certain varieties of oranges that are grown for processing. There is no distinction made by the grower, as we've testified, between which end product it goes into, so it would be the growers of all of that product.

The processed agricultural product that comes out would be orange juice extracted from those products in the form of FCOJM and NFC in bulk form for further processing, both products for further processing. That's the processed agricultural product.

I think you asked what is the substantial coincidence of --

MR. GOLDFINE: The finding. Should the Commission find that the substantially or completely devoted standard is satisfied?

MR. McGRATH: Oh, the substantially completed, completely devoted. The round oranges; I think we determined that about 90 percent-plus -- I think we said 92 percent or so -- it varies from year to year -- of all round oranges grown went into those products, production of FCOJM and NFC, and our belief is that 90 percent-plus is substantially all.

MR. GOLDFINE: Would anyone happen to know what percentage of the oranges goes to FCOJ and what percentage goes to NFC?

MR. BEHR: It varies from year to year depending upon the crop, of course. I can better give you numbers. This past year, the state produced approximately 242 million boxes of round oranges. Approximately 6 million boxes went to the fresh market, about 90 million boxes went into the production of NFC, and the balance went into the production of FCOJ.

MR. GOLDFINE: You said 96 minus -- what's the total number?

MR. BEHR: 242 in the 2003-2004 season.

MR. GOLDFINE: Okay, okay.

MR. BEHR: And those numbers are approximate. We can follow up with more precise numbers.

MR. GOLDFINE: Sure. Thank you.

Let's assume we were to find two like products rather than one like product. Could you go through the analysis for why the growers should be counted in both industries?

MR. McGRATH: Well, the most immediate difficulty is that, from the growers' standpoint, they don't grow for either one of those two products. As you've seen from the questionnaire answers, they don't keep separate data, and they don't keep separate financial information, so they don't really know where the product is going to go. The price they get paid is the same, no matter what it goes into.

So as far as substantially all, it's impossible to say that substantially all of their product goes into either one of those two end products. For some growers, substantially all goes into one product or the other perhaps, depending on who buys their fruit and how that particular processor decided to use it that year, but I'm sure that the processor's mix is going to change from year to year, too, between NFC and FCOJ production, so that will

vary as well. I don't think that you could actually make that conclusion about substantially all from the grower's standpoint.

MR. GOLDFINE: Turning to injury, I guess I would like to ask, how should the Commission consider the hurricane issue here that's been described? Does that go to the causation or injury? How does that factor into the analysis?

MR. McGRATH: Well, I think we believe very strongly it created a vulnerable industry situation. It is a natural circumstance, the type of circumstance that occurs in any agricultural product from time to time, and it's not a causal factor of injury that would be looked at in the same light as low prices from imports.

We view it as a condition that occurs which is one that occurs periodically in this industry, the type of condition that occurs periodically. I don't think you've had a hurricane as damaging as this, but there have been freezes that are similar, and it has simply put the industry in a position that's more vulnerable to the low price of the imported product.

So one point we did want to make sure was very clear: I think that your normal view of looking -- for many products in these dumping cases, you're

looking at the absolute volume of imports and the absolute market shares in many cases. Those are relevant here and should be looked at, but where you have a very vulnerable situation where many people are trying to recover from damage caused by a natural consequence, an even smaller amount than would normally be considered a large volume of imports or a large import share could be just as damaging or more damaging, depending on the price.

The point we're trying to make is that it is a condition that creates a greater vulnerability to dumped imports.

MR. GOLDFINE: Is there a business cycle or seasonal nature to the industry that the Commission should consider as a condition of competition?

MR. McGRATH: I don't think there is a business cycle that takes place over a predictable number of years. It's an existing condition that the volume of output is affected by a number of factors, including weather consequences, and there may be a number of years where there are no weather impacts, and that's a natural situation. There may be years when there is only one year of low output because of some damage from a freeze or other natural infestation problem, but those are simply conditions in which the

industry operates that are not predictable cycles. I wouldn't call them business cycles, no.

MR. GOLDFINE: Do any extractors also engage in reconstituting blending or packing?

MR. BEHR: Yes. Our company does. As I mentioned in my testimony, we not only process our members' fruit into NFCOJ and FCOJM; we package consumer products NFC for retail consumption from concentrate, chilled juice for retail consumption, canned juices, and frozen juice products.

MR. GOLDFINE: Do you have any idea how typical that is?

MR. BEHR: There are a number of processors in the state that do that. Not all do. There are a number of bulk processors that produce strictly bulk FCOJM and NFCOJ, but there are a number of manufacturers -- Tropicana is an example of a company that would process its own fruit, make NFC and/or FCOJ, and make retail products like us.

MR. GOLDFINE: And you might want to follow up in your post-conference briefs, but I guess my question would be, is there a captive-production issue in this case, and is it satisfied or not?

MR. McGRATH: We'll consider that in our briefs. You're asking whether the captive-production

provision comes into play here.

MR. GOLDFINE: Uh-huh.

MR. McGRATH: We'll have to comment on that in our brief.

MR. GOLDFINE: Also on related parties, to the extent that you can talk about it here or put it in your post-conference briefs, but is that provision applicable here, and if we find that it is, should we find appropriate circumstances to exclude any related parties?

MR. McGRATH: Yes. I think we do take the position there that for the Brazilian-owned processors in the United States, the related-parties provision should be invoked and that their data should be excluded from the analysis of injury to the domestic industry.

The appropriate circumstances -- I know the Commission looks and weighs different factors in this, but certainly if you look at the data, you'll see that there is a reason to conclude that the inclusion of the related parties' data, and I'm talking here about the Brazilian-owned processors, would skew the data for the rest of the industry, not just the processing portion of the industry but the entire industry, which includes growers. I do want to emphasize that when

we're looking at related parties, we're not looking at just what is the impact of including or excluding these particular Brazilian-owned processors on the rest of the data appears for just the processors side of the domestic industry but the overall industry.

The other factors: I know that the Commission has looked at percentage of domestic production attributable to the importing producer. There is a significant portion of processing attributable to the three primary Brazilian-owned, U.S. producers, but in terms of looking at, again, the overall impact, you have to consider the value of the input as well if you look at the overall total domestic production, not just the juice output but the value of production of the fruit as well as the juice. So it does seem appropriate to exclude them.

I think also the factor that you normally look at, the reason why the related party is importing. Is that related party benefiting from the import in some fashion? We would conclude certainly Citrosuco, Cutrale, and Dreyfus would benefit from their imports and be able to direct their imports in such a fashion to benefit overall from their overall business plan, whereas imports that are made by unrelated producers in the United States, imports

purchased by Citrus World or Southern Gardens or Duda, don't fall under the same category. Those are imports that are brought in for specific reasons, and one of them, as Mr. Behr testified, is to remain competitive.

So we will go through each one of the factors and review it also in terms of the confidential information that's been provided in the questionnaire answers in our post-hearing brief. Our initial feeling on this, though, is that, from what we've seen and analyzed, we think that the Brazilian-related U.S. processors should be excluded under the related-parties provision.

MR. GOLDFINE: One last question just for the record here. When you compare a gallon of single-strength orange juice made from FCOJM to a gallon made from NFC, does about the same number of oranges go into each gallon?

MR. BEHR: The short answer would be yes.

MR. GOLDFINE: Okay. That's all I have.

MR. CARPENTER: Mr. Fetzer?

MR. FETZER: Jim Fetzer, Office of Economics. I would like to thank everyone here for their testimony. It's been very helpful, but I do have a few questions. I would particularly like to thank the people who came here from very warm climates

to join us in this nice winter weather that we're having.

I guess my first question, and I hope that I didn't miss this in your response to David's questions, was when he was talking about the oranges, what percentage of oranges are used, round oranges, I guess, for orange juice, is it that prices in the orange market are affecting prices in the orange juice market or vice versa, or is it sort of an interaction in both directions, depending on shocks in either market? I guess I would open it up to anyone who would like to tackle that question.

MR. BEHR: Let me just reiterate the question as I thought I heard it. You want to know whether or not the price discovery in the orange sector is driven by the fruit production and/or demand for juice products, for example.

MR. FETZER: Are orange prices driving orange juice prices or vice versa?

MR. BEHR: I think that just in a general sense, you both have supply and demand interaction dictating what the equilibrium price would be for orange juice and the price of oranges. I think the combination of all supply and demand factors work together towards driving a price point. You know,

market structure issues also play a role, and certainly, as in this particular case where we've had excess supply of juice sold into this market beyond what the market needs are, you'll tend to have low prices, as we have seen.

MR. LUCAS: I would just add to that, Jim, as well, that everyone in the market looks to the futures market, and I think, as we mentioned, there is also a strong correlation between the futures market, the SCOJM price, the NFC price, and eventually the fruit price to the grower as well. So when that price gets depressed and gets low, it goes throughout the entire supply chain and depresses prices all the way down to the grower and at the wholesale level as well.

MR. FETZER: Okay. I guess that leads into another question I had on the futures market. I'm a little unsure. When you're talking about the futures price, is it a price for, like, a six-month contract, a one-year contract? I don't know whose testimony this morning sort of indicated that the Brazilians were selling directly to the futures market. I just want to sort of understand what does that mean, selling directly to a futures market? Are they just basically guaranteeing they will sell orange juice a couple of months down the road, or is it something

else?

MR. BEHR: I think when we speak to the futures price, we speak in terms of what we call the "nearby contract market price," basically the spot market, what the price of orange juice is today. When we speak to the Brazilians selling directly into the futures market, it would mean that they perhaps would have sold futures at some point, and at the time of the contract's delivery period were willing to deliver product at the price that was in the marketplace on that particular day.

We observed, over the past couple of years, a propensity for product being brought from Brazil that had been sold against the futures market and delivered at the delivery point of the contract and a willingness to deliver at the market price on that particular day.

MR. FETZER: Okay. So, typically, that doesn't happen, I guess, with domestic producers. I think someone also testified that the futures market isn't used that much.

MR. BEHR: That was in my testimony as well. The point that I was trying to make was that, generally speaking, the futures market isn't a market where one delivers product or takes product. It's a

market where the players in the market that trade would use it as a hedging mechanism to hedge their inventory or price a future sale or a future purchase. Normally, it's not used as a delivery mechanism.

MR. FETZER: Are you saying that typically this would be used, and then the contracts might just be turned over, and someone would make money or lose money, whoever is, you know, in the market to --

MR. BEHR: That's correct. There would be a financial gain or loss, depending upon, you know, your circumstances, and that financial gain or loss would be accounted for, you know, as a profit or loss on your financial statement.

MR. FETZER: But the difference here is the Brazilians are actually delivering product.

MR. BEHR: In this case, yes. It's pretty unusual to see Brazilian juice imported and directly delivered into the futures market. It's not something that I've seen in my experience in the industry.

MR. FETZER: Is there a typical length on these contracts, like six months into the future year, or do they vary?

MR. BEHR: The contract maturities in the FCOJ futures market; there is one every two months, and they can go out well over a year. Traders can

what we call "roll their positions" by selling, reversing their position and selling a deferred contract, and they can conceivably carry on a hedge for a long period of time without ever taking or making delivery.

MR. FETZER: Okay.

MR. McKENNA: Excuse me. Could I just respond?

MR. FETZER: Sure.

MR. McKENNA: I'm a grower, and as a grower, it's extremely difficult to participate in the futures market because it is FCOJ, and we have oranges, so we can't very well hedge in the futures market. However, particularly very recently since the hurricanes, if the futures market fell yesterday, the cash price that I would be offered, a grower would be offered for his fruit, the next morning would be less. So we are subject to the market whims of the futures market wild rides, but it's very difficult for us to take advantage of the hedging opportunities.

MR. FETZER: So there is no futures market for oranges themselves.

MR. McKENNA: There is none for an orange, no.

MR. FETZER: Is there any futures market for

NFC?

MR. McKENNA: No.

MR. FETZER: Just for the frozen orange juice.

MR. McKENNA: Correct.

MR. FETZER: Okay.

MR. BEHR: In the market for FCOJM and NFCOJ, there are a number of contracts between buyers and seller that tie the price of bulk FCOJM and FCOJ to the FCOJ futures market, so even though NFC doesn't have its own futures market, there's many transactions that occur in the marketplace for NFCOJ that are tied strictly to or specifically to the FCOJ futures market.

MR. FETZER: Okay. Thanks. I guess there was some testimony by Ms. Warlick this morning regarding oligopolistic behavior, and also in the petition this was described, and I guess this is characterized by the concentration of the Brazilians in Brazil and in the world market. I was wondering, do you have a sense of how much market share the Brazilians have in the U.S. market roughly?

MS. WARLICK: With respect to FCOJ, Brazilians' market share has climbed to 17 percent, we calculated, in '03-'04. It was at 11 percent at the

beginning of the period of investigation and climbed to 17, and NFC went from 1 to 4.

MR. FETZER: Okay.

MS. WARLICK: But it was basically nothing two years ago.

MR. FETZER: So with that market share, they are still able to price oligopolistically. I mean, is there, like, a price leader? Is one of the firms a price leader? Are they colluding? Is there a cartel? Just looking at the U.S. market, how does this occur?

MS. WARLICK: Well, I may not be the best person to answer this because I know that there's been challenges to the prices by U.S. processors for NFC: If you don't renegotiate this contract, we're going to purchase more Brazilian NFC because they are so much lower. So it has motivated renegotiations.

MR. McGRATH: You also have to take into account that one of the factors we're considering, in a given year, like I said at the beginning, only 17 percent sounds like that's not much of a market share, and how could anybody possibly have control? In the past, we've seen market shares as high as 40 percent. It's gone up and down, depending on how much juice was needed, but you also have to take into account that the Brazilian processors are here now, so they are in

the United States.

They are buying Marty's fruit. They are buying everybody's fruit here. They produce product in the United States, and their interests are directed by their Brazilian-based operations. Their overall global interests and strategy are directed by their Brazilian operations. For the most part, they are not growers. In fact, they own very little acreage here. So the Brazilian companies that are here aren't just some independent U.S. companies; they are part of the Brazilian enterprise, and the size of that industry has gotten smaller.

So market concentration comes into play in terms of the ability of companies of that size to influence the market, and just as one of the concerns that our processors have, as Mr. Behr testified, is when a company is large enough to be able to affect the futures price by making deliveries at low prices and accept what the results are from that, that's an indication of a certain level of power. We're not alleging that they are doing anything in violation of the Sherman Antitrust Act. We're just making an observation about their economic market power. Certainly, the Brazilian market authorities have taken a look at that industry from time to time and may be

looking at it now as well. Anytime you have an industry that large and that concentrated, they are going to have market power.

MR. FETZER: Is there a price leader in the U.S. market, particularly from the industry representatives here? Is there any company or set of companies you would consider price leaders, whether it be domestic firms or Brazilian firms?

MR. BEHR: Could you repeat that?

MR. FETZER: A price leader, any firms in the U.S. market -- is it possible to name one or two firms as a price leader, or is that not occurring in the U.S. market?

MR. BEHR: It's hard to say that that's occurring. You can go down the list of companies and identify who the big companies are, but to say that there is price leadership in this market, it's difficult to say.

MR. FETZER: Okay. Anybody else?

MR. LUCAS: I agree with Bob. I don't recognize there is any one company that is a price leader, but certainly, as a domestic processor, again, to Matt's comments, I think we're very vulnerable against the global Brazilian interests that can impact the fruit prices in Florida. They can impact the

wholesale prices in Florida.

If they could do this through use of the futures market, well, maybe if they are delivering maybe 1 percent of their world inventory to the depressed prices in the U.S. so that their competitors get lower prices and the growers lower their fruit costs, well, looking at it from a global perspective, that may be a fairly shrewd strategy that has some concerns for us.

MR. FETZER: Okay. Thanks. There was some testimony also that in conjunction to the Brazilians in the orange juice futures market, they were then buying oranges, and I'm not quite sure. Were they using that to produce U.S. orange juice and selling it on the market? What's that all about? I'm sorry. I don't remember whose testimony that was, but --

MR. MCKENNA: Yes, that was mine. The Brazilians actually own processing plants in Florida.

MR. FETZER: Okay.

MR. MCKENNA: So they buy Florida oranges and they make product that was grown and produced in Florida. That is the tough, tough part, when they can import into the futures market, conceivably depress the futures market price, then they're available and, as Charlie said, maybe with 1 percent of the product,

it makes available to them several million boxes of oranges at a cheaper price. So they're on both ends of the spectrum, but an importer and a purchaser of oranges.

MR. FETZER: The orange juice that would be made from the oranges would be U.S. orange juice, it wouldn't be considered subject product or anything?

MR. MCKENNA: Absolutely.

MR. FETZER: Okay. Okay. I had a few questions on the graphs Ms. Warlick presented this morning -- or the charts, excuse me.

On Chart 4, which compares, I guess, what you called the dumped -- the FCOJ prices in Florida and compares them to the import prices, I'm assuming that's just for NFCOJ.

Just looking at the landed duty paid value and the wholesale FCOJ price, comparing it from the beginning period, which was 2001 to 2002, it looks to me like both prices have -- excuse me. The landed duty paid price for the Brazilian has actually increased over that period and the domestic price, which I'm not sure if that's a mix of domestic and imports, just the U.S. market price or not, has fallen but it's actually in the latest period lower than the Brazilian price. Would that be correction? I just

wan TESTIMONY OF make sure.

I guess my question really is what is that wholesale price? Is that a price just for U.S. product or is it for an average, let's say, of U.S. product and product from other sources?

MS. WARLICK: The wholesale price that we have here is the only one that's reported. It doesn't include all of the FCOJ that's sold in Florida and it tends to be probably a little bit lower.

I think, Charlie, you can probably explain that better.

It's compiled by Florida Citrus Mutual, but it actually is derived from the Florida Citrus Processors Association, but Florida Citrus Mutual puts it in monthly compilations.

Anyway, so it's the best that we've got, but it doesn't include all of the FCOJ sold on the market. What is important is that at the beginning of the period of investigation it was so much higher than the landed duty paid and it has dropped significantly.

The import unit value, and I'm showing it for customs unit value, landed duty paid and the CIF, they have increased a little bit but they are starting at such a very low price.

MR. FETZER: The wholesale price, you said,

doesn't include everything but does it include any Brazilian imports at all?

MS. WARLICK: No, it doesn't.

MR. FETZER: It's just U.S. produced product?

MS. WARLICK: Yes.

MR. FETZER: Okay.

MS. WARLICK: Is that correct, Charlie?

MR. LUCAS: It's a survey done, so it's not real quantifiable, transactional data. It's a survey done by Mutual. I feel the number is high. Typically most large buyers buy in some relationship to the futures market. We have had a consolidation of buyers up above the wholesale level that typically buy in relationship to futures. This is kind of like a quoted list price, but any sizeable quantity is typically bought in some relationship to futures, which is usually a price substantially below this quoted wholesale price.

MR. FETZER: Thanks.

In Charts 5 and 6 where you're comparing values to other export markets, do these values include transportation costs to the markets in question or are they just sort of FOB from Brazil?

MS. WARLICK: They're FOB from Brazil, from

the port, typically Santos.

MR. FETZER: Okay. Is that the only data --

MS. WARLICK: They include inland transportation, but not ocean, not insurance or duties.

MR. FETZER: You mean inland transportation in Brazil?

MS. WARLICK: Yes. From Sao Paolo to Santos, generally.

MR. FETZER: Okay. So it's possible that some of these differences could be due to transportation costs? Are there any other data that would have transportation costs included that we could look at to compare?

MS. WARLICK: Yes, you would have to compare South Korea's import data, landed duty paid import data, if you could get that. Since ocean freight is not included, this is the price when it's sitting there at the port of Santos before it's gone anywhere. It's certainly indicative that we're starting out at a very low price when it comes to the U.S.

MR. FETZER: I just want to get a sense of whether the transport costs were in there or not.

MS. WARLICK: Yes. Transport costs would vary, certainly.

MR. FETZER: On Chart 12, this compares, I guess, retail FCOJ prices to wholesale prices and I was wondering, FCOJ is used to make retail FCOJ, but it's also used to make other blends, there's other end uses. I was wondering if you have any information on the changes in prices of those. Have they also gone up?

MS. WARLICK: NFC has also gone up. I can provide the same chart for NFC. Is that what you're after?

MR. FETZER: I was just wondering -- not for NFC, necessarily, although that would be good. I was just thinking in terms of other end uses, because retail FCOJ, I believe, is only one end use and I don't know how dominant it is, if it's the biggest end user or what. Isn't FCOJ used to make blended juices?

MS. WARLICK: Okay. You're right. This is reconstituted juice, so it should say retail recon. Yes. Yes. I think my label is probably not accurate here. It's the product that is made from the FCOJ, the retail product made from FCOJ, which is reconstituted.

MR. FETZER: So would you say that this stuff is also used to make all those other end uses,

then, or is this just one end use among others for FCOJ?

MS. WARLICK: This would just be reconstituted.

MR. FETZER: Okay.

MS. WARLICK: Yes. It would not be NFC.

MR. FETZER: Do you know what share end use this is? For FCOJ wholesale. Just the recon versus using it blends or whatever.

MS. WARLICK: I'd have to investigate further. I do know if you took all of the Nielsen data, if you took all OJ sales, it would still be going up. They're all trending upward.

MR. FETZER: Okay. Thanks. That helps a lot.

Also on this, I know in the petition, I believe there's a statement indicating demand has been down during the POI for FCOJ, I believe, and it's been stead for NFC, if my recollection is correct, so when you're talking about demand being down, that would be looking at the wholesale price, not at the retail prices, right? At least this chart would lead me to believe that the wholesale prices are down.

MS. WARLICK: Well, demand is just a barometer of the per capita consumption because prices

actually don't have that much to do with demand in this industry, not at the wholesale level.

MR. FETZER: Okay.

MS. WARLICK: So, yes, they were talking about per capita consumption figures.

MR. FETZER: Okay. So that wasn't looking at prices.

MR. BEHR: Jim, can I weigh in on this question regarding the market shares of use of FOJC and NFCOJ?

MR. FETZER: Yes.

MR. BEHR: I'm going to give some approximate numbers and we can follow up.

MR. FETZER: That would be great.

MR. BEHR: Retail, we believe, accounts for about, let's say, 60 percent of all FCOJM and NFCOJ produced and imported into the United States. At retail, approximately 45 percent of the sales at retail are NFC containers, 42 percent would be reconstituted orange juice from FCOJ, and the balance would be retail FCOJ.

Among the balance, the balance that's not consumed at retail would be mostly food service type outlets. The majority of that would be from FCOJ type products.

And I wanted to back up to a question. On the question that was posed to me earlier about the gallon of FCOJ and the gallon of NFC, I want to be sure that you were meaning a gallon of FCOJ reconstituted or a gallon of FCOJ?

MR. GOLDFINE: Well, single strength.

MR. BEHR: Both single strength? Both single strength, and my answer was that they're about the same amount of oranges used in both.

MR. FETZER: So if I understand this, when we're talking about just FCOJ, 60 percent is reconstituted and that would be --

MR. BEHR: No, no, no, no, no. Let's back up. About 60 percent of the orange juice, of FCOJM and NFCOJ, 60 percent of that total is consumed at retail and at retail, at 45 percent is consumed as NFC and 42 percent is reconstituted from FCOJ, single strength FCOJ, and the balance is frozen product. And 40 percent of the market is non-retail. Most of that would be food service, institutional type applications and most of that is, I would estimate, probably 80 percent of that would be from FCOJM sourced.

MR. FETZER: Is either FCOJ or NFC used to make blends of other juices? When we see things like pineapple-orange and that kind of stuff?

MR. BEHR: There are some. I would say that the percentage of all orange juice solids either produced in the United States or imported from Brazil or elsewhere is used in blends. There are, as you said, pineapple-orange. There are some light products that are available on the marketplace that are half orange juice and half water. But that would represent perhaps less than 5 percent of all orange juice produced in the United States and/or imported.

MR. FETZER: Okay.

MR. BEHR: And, again, those numbers are approximate. We can give you more specific information.

MR. FETZER: That is very helpful.

I was also wondering, in terms of substitute goods, what are some of the major substitutes and how much of an impact do they have?

Do you guys track the prices of substitutes in terms of seeing where the orange juice market is going to go or is it something where it doesn't have much impact in terms of orange juice consumption?

MR. BEHR: Orange juice competes within the juice and juice drink category and there are clearly today more products available to the consumer. I haven't looked at any studies in recent years, but

historically, there has been substitutability between orange juice and other juices and juice drinks. One of the issues that we face today is the increased competitiveness that we face. It's one of these situations that Mr. McGrath was referring to, causing the impact that we see on demand, and the fact that we are seeing exports of FCOJM from Brazil at this point in time really is devastating to the industry, both because of the competitive situation that we face in the marketplace and the excessed FCOJM from Brazil that's being shipped here and having the impact on prices that it has.

MR. FETZER: Has this been more of a recent thing with the substitutes?

MR. BEHR: Over time, we've seen an increasing competitiveness at retail with many new juice and juice drink products being offered.

MR. FETZER: Okay. Have the facilities you use to produce FCOJ and NFC, can you use to make them other products, particularly other juices, like grapefruit juices or apple juice or anything?

MR. LUCAS: I can answer that from the wholesale level. The answer is no. Typically, the plants are totally dedicated to process FCOJ and NFC from oranges.

MR. FETZER: Okay. So you can't produce other --

MR. LUCAS: No, in fact, there's no other agricultural commodities that I know that are in Florida that are processed. Most of the rest of the fruits and vegetables in Florida are going for fresh fruit markets, fresh markets.

MR. FETZER: Okay.

MR. BEHR: That would be the only thing, would be grapefruit, yes, some of the plants would do some grapefruit, processing grapefruit. We don't, we just do oranges.

MR. FETZER: I notice in the petition that you guys took the position that supply is pretty inelastic and substitutability is fairly high, but how would you characterize demand? Is it fairly inelastic for orange juice? I don't remember seeing anything on that, I might have missed.

MR. BEHR: I've had a little experience. I would characterize the demand for bulk FCOJM as fairly inelastic and one of the concerns that we have is that it doesn't take a lot of extra Brazilian FCOJM to come into this market and cause prices to go down as they have.

MR. FETZER: Okay. Thanks.

One last question and it's for Mr. McGrath. In the petition, I didn't notice any mention of lost sales or lost revenue and I was wondering if there have been lost sales or lost revenue by the domestic industry and, if there have been, is there not being any specific allegations given in the petition just because it's difficult to quantify, as is the case in some industries?

MR. MCGRATH: There are individual circumstances that we are identifying in questionnaire responses, but in some cases, it is difficult to identify a volume of a lost sale. In many instances, I think the processors are looking more at what's been the overall effect on the market on the price for them, but where we're able to identify lost sales we've tried to do that.

From the growers' standpoint, they're not really in a position to identify anything other than the declining price that they receive for their fruit, which ties back to the suppressed price that's seen at the market by the processors. But I know there are some individualized situations, confidential, I note one or two discussed in the petition itself, and we'll provide others in the questionnaire answers.

MR. FETZER: Okay. Thanks.

No further questions. Thanks for your responses.

MR. CARPENTER: Mr. Jee?

MR. JEE: I have no questions.

MR. CARPENTER: Okay. Mr. Burket?

MR. BURKET: Steve Burket, Office of Industries. I've got a couple of questions, probably for the processors. You mentioned that you blend and may use imported product to come up and meet the final specifications of the end user. Is that true for not from concentrate also? Is there any blending of not from concentrate from your domestic production to meet a specific end requirement of a user?

MR. LUCAS: If I understand the question, yes, we do blend on the FCOJ side and that's typically economically driven by the buyer as much as anything. You can make the same specification typically with a Florida product or a Florida-Brazil product but once we look at our cost structure and relay the price, if it's 100 percent all Florida, we're not competitive in the marketplace, we have to blend with Brazilian to get competitive at the marketplace because of the low prices.

With the NFC, at least from our company's perspective, we use just 100 percent Florida product

and we blend up the various varieties around oranges, again, to make the customers' specifications, so we use the varietal products of it.

MR. BURKET: Okay. On your returns to a grower, where a truckload comes in, is a grower paid based on how much goes to NFC versus how much would go to FCOJM or is there no distinction in the price that the grower receives?

MR. BEHR: In our cooperative, we pool all the growers' fruit into a single orange pool and they're paid on a single orange return by variety. There's no distinction made as to whether or not their fruit was utilized as FCOJ or as NFCOJ.

MR. LUCAS: And the same on our side. Basically, what happens, the grower delivers his fruit on the yard, then the state runs a test on the fruit, the State of Florida, says how much the fruit weighed, how much sugar content and how much the weight of the juice is, and so that we convert into pound solids per box or pound solids and then we just pay the grower on the pound solids. He has no idea whether that particular fruit -- what product form it went into.

MR. BURKET: Thank you very much.

No further questions.

MR. CARPENTER: Ms. Mazur?

MS. MAZUR: Thank you all very much for your testimony this morning. It's always very helpful to have industry witnesses here. It's always nice talking to lawyers, but it's wonderful getting the direct input from the industry.

I have one question, basically, and it's dealing with Exhibit 9 from the petition, which is the apparent consumption and market share presentation. What's presented there for both FCOJM and NFC and for the total certain orange juice market as a whole is kind of a pattern of increasing in 2002-2003, particularly Brazilian import market share and then decreasing in 2003-2004. What happened in 2002-2003 that drove consumption down and market share imports up? What happened on the domestic side, what happened on the Brazilian side?

MR. BEHR: Go ahead.

MS. WARLICK: We'll probably all pitch in on this one. 2002-2003, look at my Chart 1. There was a moderate drop in U.S. production of oranges, so that may account for some of the increase, but, of course, '03-'04, we had a big crop, we still got a lot of imports, so that doesn't explain all of it and I'll Bob Behr explain the rest.

MR. BEHR: I was just going to make the

point that there was a bigger crop in '03-'04 and as the Respondents had indicated earlier, consumption declines were experienced in the market. The fact that Brazilian imports went down is really -- you really have to look at that. The reality is we imported more Brazilian FCOJM than we needed and that's why prices went down.

As we've stated, Brazil controls 80 percent of the world's exports and the product that came in here, into this market, was more than we needed and prices suffered accordingly and our industry suffered accordingly.

MS. WARLICK: The Brazilian '02-'03 crop in the same Chart 1 shows that 370 million 90-pound boxes -- actually, that's just Sao Paolo, that's not all of Brazil, but it's most of Brazil, that was just an enormous crop.

MS. MAZUR: With respect to the U.S. production, though, it did take a dip in 2002-2003?

MS. WARLICK: Yes.

MS. MAZUR: Is that routine, where you have this kind of roller coaster year after year in terms of differences in production?

MR. BEHR: I think as we've said, year in and year out, production can go up or down, based upon

the vagaries of weather, what have you. The issue is, as we said earlier, too, that the United States is a net import market. We require imports to satisfy market demands and the burden basically in this case has fallen upon the amount of Brazilian FCOJ imports that have come into this market and have caused the low prices that we've seen.

MS. MAZUR: Okay. There was nothing then, again, in 2002-2003 that impacted U.S. production?

MR. BEHR: Yes. The 2002-2003 crop was a lower production year, as I think you can see in the data there.

MS. MAZUR: Any particular reason?

MR. BEHR: There's nothing peculiar. Again, the vagaries of Mother Nature, I think.

MR. LAVIGNE: And, as we look at that, Ms. Mazur, oftentimes you get various times during the season for producing fruit, depending on bloom or fruit set, depending if it's too wet at one of those points or too dry at one of those points, oftentimes will determine that crop. For that year, we may have had -- I'd have to look back, we may have had unseasonably dry weather, unseasonably wet weather, that would have impacted it as it went along or you had a little higher drop after the post-bloom. So

there are various steps throughout the season as that fruit is setting and growing that impact its overall performance and yield at the end of the season. So it's those vagaries, I think, that Mr. Behr is speaking of.

MS. MAZUR: Thank you. That was very helpful.

Those were all the questions I had.

MR. CARPENTER: Once again, I want to thank the panel for your excellent presentation and for your very thoughtful responses to our questions.

At this point, we'll take approximately a five-minute recess and then we'll resume the conference with the Respondents' presentation.

Thank you.

(A break was taken from 11:50 a.m. until 12:02 p.m.)

MR. CARPENTER: If everyone could take their seats, we'll resume the conference, please.

Welcome back.

MR. DUNN: Good afternoon. It's now afternoon by two minutes. I'm Chris Dunn, for the record, and sitting next to me today is Bob Kalik. I an with Willkie Farr & Gallagher and Bob is with Kalik & Lewin. We are going to be presenting

testimony today from a number of witnesses.

We will begin with Dan Tilley, Professor of Agricultural Economics at Oklahoma State University, who will explain the lack of any relationship between imports and injury to the domestic industry, and we will then go on to presentations beginning with Randal Freeman, who is the senior vice president of Louis Dreyfus Citrus, a processor in Winter Garden, Florida.

We will then go on to Hugh Thompson, president of Cutrale Citrus Juices, a processor with plants in Auburndale and Leesburg, Florida. Then we will go to Nick Emmanuel from Citrosuco, with a plant in Lake Wales, Florida.

They will testify on the nature of the U.S. market, the relationship between imports and prices and the lack of injury to the domestic industry.

We will then have testimony by Jerry Rice, former chief operating officer of Lykes Pasco, who will talk about the separation between not from concentrate and frozen concentrated orange juice.

And, finally a short statement by Amanda DeBusk, who represents Montecitrus and who will talk about organic juice.

So let me begin now with Professor Tilley.

MR. TILLEY: Thank you, Chris.

Good morning and I congratulate you for saving the government and taxpayers money by keeping it so cool in this room on this brisk day.

MR. CARPENTER: I apologize for that. We've been trying to get the heat turned up in here and they seem to be having some difficulty doing that.

MR. TILLEY: I think it will keep my mind fresher to have it this cold, perhaps. Certainly it makes anything else more difficult.

I'm here to present some conclusions of analysis I conducted to determine the relative importance of market conditions on prices of orange juice in the U.S.

I have a full report and the methodology and everything will be submitted as an exhibit in the Respondents' post-conference brief, so you will be getting a much longer version of what I've shortened today.

First, I will briefly explain what I did and basically since much of the trade in both U.S. and Brazilian juice is based on futures markets, I examined the effect of several market conditions on quarterly futures prices of orange juice in the U.S.

The market conditions or variables I used were the quantity of orange juice imports from Brazil,

quantity of orange juice imports from other sources, changes in the Florida crop report, sales and inventory levels in Florida and Brazilian exports to the rest of the world.

I used 43 quarters of data from 1994 to 2004 to get a sufficiently large statistical sample for the analysis.

My overall conclusions, as I will show in the forthcoming presentation, are the following:

1. Futures prices of orange juice are significantly and negatively correlated with the Florida crop report.

2. Futures prices of orange juice are also significantly and negatively correlated with the Florida inventory size.

3. During the period of investigation, we had large Florida crops, record inventories and slightly declining demand and prices were low.

There's virtually no correlation between the price of orange juice and imports in the data on a quarterly basis that I used. This finding is consistent with the small presence of imported product, between 10 and 13 percent in the market.

Since the 2004 hurricanes, in Florida, the large inventory reserves are depleting, as you would

expect, and, based on historical performance, we would expect prices to continue to increase if the crop forecast remains at current levels or declines further, or if the hurricane damage impacts are longer-term impacts on Florida crop size for future years.

Slide 1 shows that futures prices of orange juice are negatively correlated with the Florida crop report. On the graph that's on the screen and in my comments, you will see the Florida crop report on the right-hand access and quarterly average futures price in cents per pound of solids on the left-hand access.

When that crop report is high, we have a tendency for the -- and that's the dark blue line -- for the prices to decrease. There's kind of a mirror image when the crop report is low, prices increase.

This is a statistically significant correlation of negative .478 between these two variables and we can conclude that historically when the crop report has been high, futures prices of orange juice have declined and vice versa.

Slide 2 shows that futures prices of orange juice are also highly correlated with the Florida inventory size. It's important that you recognize how I've calculated the inventory index.

The inventory index was created to normalize seasonal fluctuations that typically occur in inventory levels. One on the inventory index means that the actual inventory for that quarter and the average inventory were the same. If the inventory index exceeds one, the actual inventory for the quarter was lower than the average and if the inventory index is less than one, the actual inventory for the quarter was higher than the average.

As you can see, you get a correlation of .622 between these two variables. This is the highest correlation I found in the data set that I used and it's statistically significant.

We can conclude that when the inventory has been high, that index is low and futures prices have been low.

If we apply these findings to the time period relevant to this investigation, Florida crops and inventory were very high during the period of investigation or the proposed period of investigation. U.S. availability, inventory and production also exceeded quantity demanded, which declined slightly during the period.

As we expect in supply and demand markets, when supply increases, demand declines, prices drop,

which is what happened.

Next, slide 3 shows my findings with regard to the relationship between imports and price. As the slide shows, the correlation between imports and price is 0.58, which means that there is virtually no correlation between the price of orange juice and quarterly imports. This correlation is not significantly different from zero.

This conclusion makes sense in light of the low level of imports in the market and, as slide 4 illustrates, domestic production dwarfs imports in the marketplace.

Imports were consistently in the neighborhood of 15 percent of the market. They've been higher, depending on which quarters you look at or which years you look at. We've shown all imports, including those from Brazil and other countries. Brazilian imports would be lower, more like 10 percent, and therefore a much smaller part of the market.

Because imports are such a small percentage of the market, as my research found, imports would logically not have the tremendous price effect in the market independent of their potential effect on inventory.

It is important to point out that U.S. exports, and I don't think anyone has talked about our exports this morning, are not included in our U.S. market size data and that's gone into in considerable detail in my full report. Let me explain some of the market dynamics with respect to the export sector, however.

The U.S. industry is able to export orange juice in large part because of the duty drawback from imports. In order to be competitive, and what I'm trying to say here, in order to be competitive in the export market, Florida processors need the duty drawback so they can offer juice at a price that is competitive with world markets and most of that duty drawback comes from imports from Brazil. Most other imports, as the Petitioners suggest, enjoy preferential tariff treatment.

During the data period, imports from Brazil exceeded exports and it's likely that nearly all U.S. exports have earned duty drawback. So we calculated net Brazilian imports in this graph and I think this is an important chart to see.

We subtracted exports from Brazilian imports and graphed the difference here in slide 5.

For the data period, net Brazilian imports

are 3.9 percent of total availability and from October-December 2003 through July-September 2004, net Brazilian imports are only 2.1 percent of total availability.

You can look and you'll see nine quarters of the 43 I looked at where we exported more than we imported and I would argue that almost all of those exports earned a duty drawback and needed that duty drawback to be competitive in the international market.

Since the 2004 hurricanes in Florida which greatly reduced the Florida crop, the large inventory reserves of 2004 are depleting at rapid rates compared to previous years' inventory declines. As my research found, since inventory is declining, we expect prices to rise, as we have seen in recent months.

In conclusion, imports of FCOJ from Brazil have no significant impact on U.S. prices independent of their effect on inventory. If the U.S. industry suffered from low prices in 2004, it was because of the domestic crops and the large inventory, not necessarily because of the imports per se.

Thank you.

MR. DUNN: I'll turn now to Randal Freeman of Louis Dreyfus Citrus.

MR. FREEMAN: Good afternoon. I'm Randal Freeman, Senior Vice President of Louis Dreyfus Citrus, Inc. I am the former president of the Citrus Associates of the New York Cotton Exchange, Inc., which was the body that governed the futures market before they were folded into the New York Board of Trade. I am the present chairman of the citrus committee of the New York Board of Trade and a member of the Board of Governors of the New York Board of Trade.

Louis Dreyfus Citrus is a domestic producer, packager, exporter and importer of both FCOJM and FOJR or frozen concentrated orange juice for retail packages. I appear today representing my Florida-based company and I state that I believe that bringing this case at this time and in this manner is a mistake and can only harm our industry in Florida.

We have two factories, representing a capital investment of over $55 million in the state of Florida. My neck is on the line for having told the boss to put his money there.

We have a core business which requires at a minimum the concentrated juice from about 25 million boxes of oranges. In 2003-2004, we processed just under 25 million boxes, purchased the balance of what

we needed, plus an extra million boxes worth from Southern Gardens that we bought on a defensive basis.

On August 23rd, after the first hurricane, we estimated that we had 22 million boxes of oranges purchased for the '04-'05 crop, the one that we're doing right now. After the second and third hurricanes blew through the state, that number was reduced. After the USDA estimate that came out last week, on the 12th, we now estimate that we have about 15 million boxes.

We do, however, have our 25 million boxes of core business, of customers, and the only way that we can retain that business is to import product from Brazil, purchase domestic and take delivery of futures. It's going to take the combination of all three of that for us to come up with enough product to serve our customer base.

If we are unable to do the first, import the product from Brazil at fair and economic prices, the ability of my Florida business to survive is going to be imperiled.

Most products sold in the United States which use FCOJM, and my remarks are limited to FCOJM because I don't do NFC, most products that use FCOJM are a blend of domestic and imported concentrates.

The overwhelming majority of such products have Brazil listed on the source on the label on your retail package. Country of origin packaging is requiring is orange juice.

The reasons for blending include the following: 60 percent of Florida's oranges do not make industry standard 94 score. They are early, mid variety that have low color, they're more appropriately called yellow oranges, yellow juice than orange juice. Brazilian or Valencia type oranges are needed to bring that up to 94 score.

The second is improving the viscosity of domestic concentrates, which is especially important in the food service business.

The third is adhering to those retail labels, which show Brazil as being in the final product. Those retail labels do not necessarily tell the whole truth. The country of origin labeling that Customs allows says that as long as you have the country that has 75 percent of your imported component on there, you can put 24.9 percent of product from the Republic of South Africa, Honduras, Belize, Costa Rica, Mexico, Nicaragua, Guatemala and Columbia, or anywhere else you can find orange juice, in there without having to declare it on the label. But

nonetheless, by using Brazil, it masks the sins of the others.

The ratio of Brazilian to domestic and other imported concentrates fluctuates dramatically. The larger the Florida crop, the smaller the amount of Brazilian. The smaller the Florida crop, the more Brazilian is required.

Most orange juice sold in bulk in the United States is done so in a way which is directly or indirectly linked to the FCOJ futures market. This market trades daily. The prices traded on this market are the only ones that are publicly and broadly available on a daily basis throughout the world.

In a very real way, the prices on this exchange set the prices at which FCOJM is bought and sold, much like West Texas intermediate crude is the price everyone points to as where oil is today.

Because of the futures market size, its market composition, the continuity of trading, along with both exchange and governmental, the CFTC, oversight, it's impossible for any one company or any group or combine of companies to influence the market sufficient to injure or to help the industry as a whole.

The primary move of FCOJM prices is the

perceived future relationship of domestic supply and demand in the delivery market, which is in Florida, in the main. The most crucial issue about this relationship has to do with whether or not the United States is going to retain the protection afforded by the tariff on FCOJM from Brazil. Let me explain this.

FCOJM is a commodity that is traded on the world market at prices either directly linked to or with reference to the futures prices. As such, there is a universal world market price. The only thing that allows the U.S. market to have a higher price than the world market is the normal U.S. tariff on FCOJM, which is 9.25 cents per single strength liter, which works out to 29 cents a pound solid. Therefore, depending upon the price of juice, the ad valorem rate of the tariff has varied between 15 and 54 percent of the price of the merchandise over the past 15 or so years that I've been in the industry.

Under these circumstances, the ability of the tariff to achieve a U.S. price higher than the world market price depends upon the extent to which the U.S. is a net importer of FCOJM. If total U.S. production exceeds U.S. demand such that the U.S. has an excess over the market demand beyond what it imports, the U.S. price will move inexorably to the

world market price until it reaches it.

In October of 2003, October 29th, I think, or the 27th, the Florida Department of Citrus publicly estimated that Florida's production alone would rise from 86 percent of U.S.A demand that Florida produced in 2002-2003 to 108 percent of U.S.A demand in 2003-2004. We went from being 86 percent of what we needed to producing 108 percent of what we needed.

This huge crop came at the same time when domestic consumption had dropped, primarily as a result of the Atkins Diet phase. And, as a result, the inventory overhang of Florida juice reached the highest level in years.

In June of 2004, the futures market reached a 27-year low. That date coincided with Florida's industries reaching an inventory peak. You reach inventory peak right when you finish processing and then the rest of the year you draw it down. At this point, although imports had dropped dramatically and exports had increased dramatically, that swing was not sufficient to offset the U.S. market surplus and, as portended, the U.S. prices reached the world market price of about 55 cents per pound solid, the duty unpaid price that juice trades at globally.

Prices basically stayed there, with a few

minor ups and downs, until the October USDA crop report was released confirming the extensive hurricane damage to the Florida crop. At that point, it became apparent that domestic supply would not meet or exceed domestic demand for a long time and prices in the whole complex, fruit, concentrate and futures reversed what had been an 18-month downward trend, beginning the slow climb back up.

With current projections for the lowest domestic crop in over a decade, signs that consumption will at least stabilize if not pick up as the low carb diet crazes have peaked, and a much reduced new crop coming out of Brazil, this trend is almost certain to continue.

Between 1992 and 2004, four companies with ties to Brazil made a combined capital investment in Florida citrus processing of well over a half a billion dollars. Without a viable grower brace, this investment is going to go to zero. These companies, my own included, have no incentive to injure the U.S. domestic industry by unfair imports or anything else because we're part of the domestic industry.

These companies as well as the other Florida processors and packagers import Brazilian juice to attain quality standards, adhere to labeling laws and

enable exports of Florida product into the world market using the duty drawback, which is necessary to do it.

Brazilian FCOJM, unlike product that enjoys duty-free treatment, is less a competitive product than a complementary product to what's manufactured in Florida. We need Brazilian FCOJM to make the Floridian product marketable.

Florida's current crop, now estimated at 162 million boxes, will most likely be followed by a series of sharply reduced crops. Both long-term hurricane damage to the trees and the wild outbreak of citrus canker portend sharply reduced production for the future.

Florida's closing inventory of FCOJM, the overhang, will certainly be sharply reduced this season. FCOJM production this year is going to go from 146 million to 67 million boxes, cut more than in half on FCOJM. As a result of this reduction, even with declining demand, credible estimates put the closing inventory between 82 and 112 million gallons at 30 September, a reduction of between 30 and 50 percent in the inventories in Florida.

Given these developments, the Florida citrus industry will desperately need to import increased

amounts of FCOJM from Brazil and without these imports it's going to be impossible to meet both quality standards and quantity required for domestic demand over the next 18 months.

MR. DUNN: Let me now introduce Hugh Thompson of Cutrale Citrus Juices USA.

MR. THOMPSON: Good afternoon. My name is Hugh Thompson. I am President of Cutrale Citrus Juices U.S.A. of Auburndale, Florida. I have been President of Cutrale Citrus Juices since 1996 and have over 35 years experience in the citrus industry. I would like to speak to you this morning about the condition of the U.S. industry producing orange juice and the role of Brazil, FCOJ, specifically Cutrale's role in the U.S. market.

Much has changed since the commission last conducted an initial antidumping investigation of FCOJ in 1986. Beginning in the 1990s, four companies with significant Brazilian production, Cutrale, Citrosuco, Louis Dreyfus, and Cargill, began purchasing both production facilities and orange groves in Florida.

In Cutrale's case, we purchased the Auburndale and Leesburg facilities in 1996. These processing plants had previously been owned and operated by Coca Cola Foods, maker of the Minute Maid

products. These plants were purchased in order to support Cutrale's growing business in the U.S., Europe and Asia. Cutrale also saw Florida as a source of product for its European and Asian business in years where Brazil had a short supply.

We have invested heavily in the two processing plants, which today have the capacity to process over 45 million boxes of oranges every year. Our investment in Florida production today is in excess of $200 million. Since purchasing the plants, Cutrale has spent over $100 million adding storage capacity for both concentrate and NFC and increasing processing capacity by 40 percent.

Today, the four Brazilian-related companies I mentioned make up approximately 47 percent of the Florida fruit processing capacity. In buying these plants, Cutrale, like other Brazilian producers, has really become a large part of the domestic orange juice business.

In order to utilize our processing capacity in Florida, we must purchase oranges from Florida. We cannot run these plants using inputs from Brazil because the product that comes in from Brazil is already in liquid form. While we can and blend imported juice with the Florida juice we produce,

without Florida orange production, our plants would be idle.

Given our investment in Florida, we are not about to do anything that would jeopardize or even threaten the health of the Florida orange juice industry. We believe that we are as much a part of that industry as any one of the Petitioners in this case. In fact, a larger part.

For us to import juice in quantities or at prices that would threaten the health of the U.S. industry would simply make no sense, based on the investments that we have made in the U.S.

Why, then, does Cutrale import juice from Brazil? Three reasons. First, it is essential for some imported Brazilian juice to be blended with some of the FCOJ that is produced from Florida oranges. Brazilian juice at times is necessary to achieve color, quality and viscosity, characteristics that are necessary to reach USDA 94 score levels that is the standard in the market. This is particularly true at certain times of the year when certain types of Florida oranges are not available in sufficient quantities and quality. If we are to produce a uniform product throughout the year for our customers at times we must blend Brazilian juice with domestic

juice.

I would point out that every single one of the companies that are petitioners in this case either import Brazilian juice on their own or purchase Brazilian juice on the market for blending with their domestic production.

Second, Brazilian juice is imported in order to ensure a steady supply; that is, to even out the irregular supply situation that is inherent in agricultural products. This year with the hurricane is a good example of this situation. If you look at imports over the last ten years, you will see that imports tend to increase when domestic supply is down and therefore prices are high and decrease when domestic supply is plentiful and therefore prices are low.

Third, in order for Florida producers to participate in the world market, it must have duty drawback credit which is generated through the imports of Brazilian products. There is an opportunity for Florida to sell products in the international markets, but it must be priced competitively and this is only possible with the use of duty drawback credits.

These conditions have certainly determined Cutrale's behavior in the U.S. market. As you may

know, Cutrale Citrus Juices is owned by Sucocitrico Cutrale, the largest orange juice exporter in the world. However, the U.S. is a relatively small portion of Cutrale's Brazilian sales and accounts for only about one-fifth of the company's worldwide exports. Cutrale Brazil principal markets are in Europe and Asia.

In 2004, Cutrale Citrus Juices in Florida produced from U.S. oranges almost twice as much as Cutrale exported to the U.S. from Brazil. Clearly, Cutrale seeks to serve the U.S. market primarily out of its Florida production and its imports are not intended to jeopardize its U.S. production by excess imports from Brazil.

Given this supplemental role the Brazilian juice plays in the U.S. market, it is not surprising that imports of Brazilian juice over the past few years have been low. On average, Brazilian imports account for only about 10 to 15 percent of U.S. consumption. This is less than a third of the level of imports in 1986, when the commission first investigated the case.

Imports from Brazil have been low because over the past three years U.S. crops have been very large and there have been considerable inventory

build-ups. This combination of large Florida crops, high inventory, reduced consumption and the attack by competitive beverages is what has caused prices to drop in 2003. Imports from Brazil, limited as they were, were not a significant factor in prices.

Having said that, I must tell you that under the current conditions the supplemental role that Brazilian orange juice plays in the U.S. market may make it more important for us to import juice from Brazil in the near future than it has in the past. The impact of the hurricanes on the crops in Florida has been devastating. The 2004-2005 Florida crop is likely to be the smallest in 13 years. Moreover, the inventory of available juice in the U.S. will be reduced significantly.

The result has been an increase in price. To date, imports from Brazil have not risen to take account for the impending shortage of the juice in the U.S. Cutrale, for one, has long-term commitments in other markets, Europe and Asia, that will prevent it from significantly increasing its imports to the U.S. However, given the small size of the U.S. crop, it may well be necessary for imports from Brazil to increase.

Without increased imports to blend in with domestic juice, it may be difficult for us to sell

domestic juice at the quality and prices the consumer has come to expect.

The Florida orange juice industry is facing a number of difficult conditions. Demand has declined over the past few years as a result of the Atkins Diet craze, as well as significant competition from other products in the beverage category; for example, bottled water. At the same time, our Florida crops have been devastated by hurricanes resulting in increased prices. Under these circumstances, the imposition of dumping duties on Brazilian juice will only cause the blended juice, which is required to reach necessary quality and quantity levels, to become more expensive.

The results will be higher prices to the U.S. consumer, which will perpetuate consumption decline, and in the end require the Florida industry to spend more money to recover or stop this consumption decline. This will threaten the long-term ability of Florida producers to compete.

The real threat to the Florida industry is not imports, it is the filing of this dumping case at this time.

MR. DUNN: We'll turn now to Nick Emmanuel of Citrosuco.

MR. EMMANUEL: Good afternoon. My name is Nick Emmanuel and I'm the President of Citrosuco North America. Citrosuco North America is a U.S.-based manufacturer, importer, and exporter of both frozen concentrate orange juice for manufacturing and of not from concentrate orange juice.

Citrosuco North America is part of the worldwide Fisher Group of companies that includes large worldwide orange juice manufacturing, transport and delivery system operations.

Over the past eight years, Citrosuco North America has invested well in excess of $100 million in its orange juice manufacturing operations in Lake Wales, Florida. We not only significantly expanded the FCOJM production capacity of the Alcoma plant, which we purchased in 1997, we also invested heavily in NFC storage and production capacity, making Citrosuco North America one of the top five orange juice processors in Florida, accounting for between 10 and 15 percent of Florida's citrus processing production.

With this background, I'd like to first address the claim that imports of Brazilian NFC are somehow injuring the domestic market. The Petitioners know full well that NFC as a distinct product has not

and cannot be the cause of injury in this case. It is for this reason that they have tried to lump all orange juice products into one like product.

To the contrary, NFC is a separate and unique product line offered by Citrosuco to its customers, where we select special fruit and we use special extraction line setups for NFC, versus our setups for FCOJ production.

Citrosuco first began importing NFC to the United States in 2002. This coincided with Citrosuco's development of a unique, technically sophisticated aseptic terminal and dedicated tanker ship transportation system. The system was primarily developed to support the export of NFC from Brazil to Europe, where juice oranges are not grown in quantity domestically. This system can also be used with significant limitations to supplement NFC requirements in the United States.

The total movement of NFC from domestic sources over the past two crop years as reported by the Florida Department of Citrus has been on average 566 million single strength gallons. Imports of NFC to the United States from Brazil in 2003 represented 17.5 million single strength gallons. For the period January through October of 2002, 12 million single

strength gallons were imported from Brazil, thus, Brazilian imports of NFC during this period represent less than 3 percent of NFC movement.

During the same period, NFC exports from the U.S. were more than double NFC imports from Brazil, more than offsetting the effects of Brazilian imports.

In any event, even if the Petitioners' allegations that NFC were sold significantly below the cost of production or fair value were true, which I am here to publicly say they are not, the level of imports cannot possibly be injuring the Petitioners.

Further, the levels of NFC exports from Brazil to the U.S. are unlikely to increase in significant volumes any time soon. In the case of Citrosuco, we have a unique relationship with one customer who also happens to be the largest processor and marketer of NFC in the U.S.

Unlike FCOJM, which can be stored and shipped on demand, the logistics of producing NFC in Brazil and shipping to the U.S. are extremely complicated.

Citrosuco does not have dedicated aseptic storage capacity in Brazil to support U.S. NFC shipments. We manufacture the product and ship it directly to the port of Santos for loading on an

aseptic vessel. We do not have aseptic storage in Florida at the port to receive the NFC. The NFC is delivered and it must be loaded immediately into tanker trucks and shipped directly to our customer. Thus, shipments of NFC to that customer are limited to the Brazilian growing season and to those occasions when our customer's aseptic tank farm facilities have available space.

One might expect imports of NFC to increase next fall, given the extensive damage and reduction of the U.S. crop resulting from the hurricanes. The NFC from Brazil will not likely be available to assist the U.S. market. As has been reported by the USDA Foreign Agricultural Service, Brazil has experienced a significant drought this season that has left crop estimates for next year to be reduced by approximately 65 million boxes. In Europe, which is our largest market for both NFC and FCOJM, the NFC consumption continues to rise dramatically, with a 250 percent increase in NFC consumption in the U.K. and an 83 percent consumption increase in France in 2003.

Citrosuco's NFC capacity is typically 100 percent committed 12 months in advance. Based on the FAS projections, there simply will not be NFC available from Brazil to increase NFC imports to the

U.S. next year.

Now I would like to address imports of FCOJM. In crop year 1998-1999, Citrosuco imported approximately 90,000 metric tons of FCOJM. In 2003-2004, Citrosuco imported less than 35,000 metric tons, representing an over 60 percent reduction in imports.

We have to import some quantities of FCOJM from Brazil annually for blending with our domestic production to help meet USDA grade for color and flavor when we process our early and mid season fruit. Additionally, Citrosuco cannot have a vigorous export program without using the Customs drawback program to make exports competitively priced.

Finally, during the past five years, Citrosuco had a long-term contract that required large volumes of Brazilian FCOJM, Notwithstanding these needs and requirements, Citrosuco's exports to the United States have declined 60 percent over the last six years.

There is no doubt the Florida industry is struggling through some significant challenges. It started with overproduction and an unexpected dramatic drop in consumption. This has been followed by a historic crop reduction due to hurricanes and now a

significant canker threat. While it is easy to blame the problem on imports, such claims are baseless.

Citrosuco North America as a Florida processor faces significant challengers in the coming year. The extensive crop losses due to hurricanes will severely limit the amount of fruit we will be able to process this year. This lack of fruit will dramatically affect our plant efficiencies and challenge us as management to maintain our profitability. Finally, we will need imports to maintain quality and to meet our long-term customer commitments.

Citrosuco did not invest in excess of $100 million in Florida production to turn around and use its Brazilian production to drive U.S. prices down and drive Citrosuco North America into bankruptcy. It is not in our company's interest to injure the U.S. industry and we are not doing so.

MR. DUNN: I turn now to Jerry Rice, who is not the wide receiver for the Seattle Seahawks, but is in fact former CEO of Lykes Pasco, to address the issue of the differences between NFC and FCOJ.

MR. RICE: My official name is Talmedge Rice. I am the former Chief Operating and Officer of Lykes Pasco, Inc., who was formerly one of the largest

processors and marketers of citrus products in Florida.

During my career, I served ten years on the Florida Citrus Commission, and a past president of the Florida Citrus Processors Association, a past president of the National Juice Products Association, and I have served on the board of the Gulf Citrus Growers Association. I hold a Master's in agricultural economics from the University of Florida.

I come before you today to provide you with a better understanding of the clear product difference between frozen concentrated orange juice for manufacturing, FCOJM, and not from concentrate orange juice, NFC.

For someone like myself, who has spent his life manufacturing and selling orange juice, that these are two different products is as clear as the difference between winter and summer. However, I am happy to point out these differences to you today.

In a manner, any of you who drink orange juice already know the difference between concentrated orange juice and not from concentrate. You know that not from concentrate tastes much more like it comes straight from the orange. It is sweeter and tastes like it is fresh. In contrast, concentrated orange

juice tastes good, but by no means tastes fresh.

You also know that when you buy NFC in the grocery store you pay more for it, significantly more. In fact, it's generally about 35 to 40 percent higher than for reconstituted FCOJM products.

These two fundamental differences in the consumer's perception of the product do not result from marketing spin. They are results of fundamental differences in the manufacturing and handling of the two products, differences well recognized by the FDA, USDA, and their standards of identity and under the harmonized tariff classification system.

NFC is a delicate product. It must be processed in a particular way to maintain fresh squeezed taste. Light extractor and finisher pressures for juice extraction are used. Then the juice is flash pasteurized at a low temperature. The finished product may be at 11 degree brix ready for packaging for the consumer.

In contrast, FCOJM is subjected to hard extractor and finisher pressures. Also, water extracted soluble orange solids are removed from the pulp and are added back to the juice in line. This increases the juice yield approximately 5 percent. And then it is concentrated at a very high

temperature. This results in an intermediate product, usually concentrated to 65 degree brix that has a number of uses, both as juice and for other applications, and is not consumable in its form.

The resulting NFC product has a shelf life of no more than 18 months and must be maintained at a temperature just at or slightly above 32 degrees Fahrenheit. Storage requires a very costly aseptic environment to avoid bacteria growth. In contrast, FCOJM does not require aseptic storage. It has an indefinite shelf life provided it is maintained in storage at approximately 18 to 20 Fahrenheit.

It is because of these significant differences in storage and handling temperatures that approximately 90 percent of all NFC is packaged in Florida close to or at the processing plant for retail sale, while only about 10 percent of FCOJM is packaged in Florida for retail sales.

NFC is sold in one way: as orange juice. In contrast, FCOJM is sold in many forms to many end users. It is sold to consumers in the supermarket freezer section in cans at 42 brix or as a chilled reconstituted juice or as non-chilled reconstituted juice in cans, bottles or tetrapacks. It is also reconstituted through institutional dispensers in

cafeteria settings and sold as a fruit juice base for orange drinks and sodas. It can be used as a food ingredient but, again, is not directly consumable.

The two products are also priced in fundamentally different ways. As you've heard, FCOJM is a commodity. It is traded on the futures market. It's priced on a pound of fruit solids basis and it has a very active spot market. Virtually all sales at the wholesale level are priced on the basis of futures.

NFC is not a commodity. It is not traded on the futures market. While it may be sold on a pound of fruit solids basis or on a single strength gallon basis, there is no simple formula for pricing NFC in the wholesale market. Different formulations are used which reflect the limited shelf life of the product. There is no spot market for NFC.

The premium nature of NFC is ultimately reflected at the supermarket where NFC consistently sells for an average price of 35 percent above FCOJ or reconstituted juice. The consumer pays a premium for higher quality and, in the case of orange juice, the consumers have indicated a clear preference for NFC, with sales up 13 percent over the past four years, while FCOJ sales have plummeted 42 percent and

reconstituted juice sales are down about 17 percent.

The top three processors and marketers of NFC account for about 90 percent of retail sales. You've probably seen their ads on TV, where they stress these product differences. NFC has never been concentrated and has not been overly processed, nothing added, nothing take away. NFC is what the consumer is demanding and if the brand marketers could convince them that NFC and FCOJM were the same like product, they would. They can't because the products are fundamentally different.

Thank you for the opportunity to clarify this issue for you.

MS. DEBUSK: My name is Amanda DeBusk from Miller & Chevalier and I'm here on behalf of Montecitrus Group. With me is Duane Layton.

Montecitrus is a group of companies owned by Brazilian orange growers. Montecitrus buys oranges from its member growers and others, has them processed and exports them to the various markets, mainly in Europe. Last year, Montecitrus accounted for about 3.5 percent of Brazilian orange juice exported to the United States.

Montecitrus supports the presentations made by Cutrale, Dreyfus and Citrosuco on injury, causation

and threat. There is one issue unique to Montecitrus. Montecitrus produces and exports a small volume of organic orange juice to the United States. We will be addressing organic orange juice in our post-conference brief. We appreciate Petitioners' willingness to look at whether organic orange juice should be included in the case. We would be pleased to provide a definition of the exact product to be excluded.

We have in mind a product that is produced in accordance with regulations governing the land management, cultivation, harvesting, hauling, packing, handling, marketing and labeling of organic orange juice.

This concludes our statement.

MR. CARPENTER: Thank you very much for your testimony.

We will begin questioning with Ms. Haines.

MS. HAINES: Thank you.

Can you tell me how many growers and processors there are in Brazil and any entrances or exits from the industry?

MR. FREEMAN: As far as number of growers, it's measured in the thousands.

MS. HAINES: Okay.

MR. FREEMAN: I remember a number that's

much larger than that. In terms of entries and exits to the industry in terms of the number of processors today versus 15 years ago and the number of growers, if I kept going, I'd end up doing a bunch of proprietary information that I would prefer to put in the brief.

MS. HAINES: Sure. Okay.

MR. FREEMAN: We've got the data.

MS. HAINES: Well, in particular, I'm a little interested in Cargill, who sold their processing plant in Brazil, and I'm hoping that we might be able to get some numbers for them from you guys. I don't know if that's possible.

MR. KALIK: I think we've already responded to that conundrum, as I think we would call it.

MS. HAINES: Okay.

MR. KALIK: I think the situation is the situation. We certainly confidentially have discussed this and we'll continue to discuss it confidentially.

MS. HAINES: Okay. And what would you consider the capacity constraints to the Brazil industry? Or production constraints. Sorry.

MR. DUNN: The production constraints are the size of the crop. You can't produce what doesn't come off the trees and the size of the crop is

affected by various factors that we could go into, but I'm not exactly sure what your question is.

MS. HAINES: Neither side has really talked about labor, so that doesn't seem to be any sort of issue at all.

MR. KALIK: In Brazil, the main constraint on production is, as Chris said, the size of the crop, which is subject to the vagaries of Mother Nature.

MS. HAINES: Right.

MR. KALIK: Florida has freezes and hurricanes, Brazil has drought. Drought and/or other inclement weather, just too hot or too cold during crucial times.

On a longer term basis, in Brazil, the factor is competition for land, primarily with sugar cane. Sugar cane and then ethanol prices are heading up, all of a sudden you're going to get land. The sugar cane guys are going to come over and say, no, we want that. That's the longer term projection. But labor, industrial inputs, fertilizer and what not are nowhere near what Mother Nature can do. That's the big one.

MS. HAINES: Okay.

MR. THOMPSON: At least for Cutrale, the company I represent, certainly another constraint is

economics. I mean, our company is business to make money and it's not certainly going to continue to process fruit where it does not see it is able to make money.

MR. KALIK: One additional factor is the fresh fruit market in Brazil, which does limit the amount of fruit available in any given season to the processors and that fresh fruit market, depending on the economics in Brazil at the time, varies radically from year to year, so it can go up 30, 40, 50 percent in a year, thus taking the fruit out of the processing sector into the fresh fruit sector.

MS. HAINES: Why would it change that much in a given year?

MR. FREEMAN: Remember, Brazil is less of a poor country today than it was when I started first going there 15 years ago. And when oranges get cheap, the consumption doesn't go from one glass to a glass and a half, the consumption goes -- it's not like a rheostat, it's an on/off switch. They're not having orange juice, it's food. All of a sudden it becomes cheap food and that's the reason it's on/off.

MS. HAINES: Okay. That's all I have.

MR. CARPENTER: Mr. Goldfine?

MR. GOLDFINE: Before I begin my questions,

I just want to reiterate what I had said earlier, that if you feel that any part of your answer calls for BPI, please let me know and include that in your post-conference briefs.

I'd like to start with the domestic like product and I guess first of all, I guess it was Mr. Emmanuel. You made some mention of special fruit being used to produce -- I think it was for NFC. What did you mean by that?

MR. EMMANUEL: When we process for NFC, we select fruit based on certain attributes that the customer is looking for, but typically we select for brix level, which is the amount of sugars in the fruit, and sometimes for a ratio, which is the brix to acid ratio. We also select for color at times. So it just depends on the time of the season, the customer, specific attributes that the customer is looking for, but we absolutely segregate our fruit in our overall delivery plan for processing.

MR. GOLDFINE: Let me back up one step there. What we had talked about earlier with the Petitioners, do you agree that primarily or almost exclusively round oranges are used to produce both NFC and FCOJM?

MR. EMMANUEL: Yes. Yes.

MR. GOLDFINE: So there's no dispute as to that. Are there certain types of round oranges that are used more to produce NFC?

MR. EMMANUEL: In Brazil, yes. There are certain varieties that customers like more than others. A Pera has more of the attributes that customers like versus the Hamlins or the later season Valencias. And in the U.S., also, the customer tends to favor the Valencia type fruit over the early and mid fruit.

MR. GOLDFINE: Is Brazilian FCOJM and U.S. FCOJM interchangeable?

MR. FREEMAN: No. No.

MR. GOLDFINE: Can you expand on that?

MR. FREEMAN: The Brazilian orange crop is heavily Valencia, Valencia-type oranges. The Florida crop is 60/40, it varies from season to season, but 60/40 an early, mid season variety. Some of the varieties, the major Florida processor of NFC won't even accept in production, there's one variety in particular. And for a number of technical reasons, which I do not know, but could provide, Brazilian FCOJM has a lower viscosity level. It flows easier, it doesn't gel up. I guess you could say that you can use Brazilian FCOJM damn near every place, but you

can't use Florida FCOJM damn near every place, there's a difference.

MR. GOLDFINE: I'm sorry, I didn't catch the last part.

MR. FREEMAN: Well, the Brazilian has higher color that's acceptable, it's higher than grade, so you can use it. A higher viscosity than is necessary, so you can use it by itself, whereas the Florida wouldn't make grade. But when you blend the two together, you take the Brazilian down a little bit and the Florida up, the blend makes grade.

MR. DUNN: Let me just -- you seem to not be able to hear what he said earlier. What Randy said was you can use Brazilian for just about everything; you can't use Florida for just about everything.

MR. GOLDFINE: Okay. And for just about everything, you're talking about --

MR. FREEMAN: Making 94 score, specifically. Making grade.

MR. GOLDFINE: Okay. Is Brazilian NFC interchangeable or substitutable with domestic NFC?

MR. KALIK: NFC?

MR. GOLDFINE: The question was is Brazilian NFC substitutable or interchangeable with Florida domestic NFC.

MR. EMMANUEL: In terms of attributes, the answer is yes, but in terms of labelling, typically, no, because there are some concerns within certain areas where labelling would be an issue. And back to the earlier question as it relates to segregation of fruit, Mr. Freeman did refer to one specific marketer of NFC in the U.S. specifically excludes one variety of fruit that's grown in Florida from any of their NFC products and we do process a significant amount of that, so we have to segregate that out as well. So, again, not all fruit is usable in NFC products for a significant amount of the marketplace.

MR. GOLDFINE: And do these differences that you've both indicated, how do they factor into the purchasing decisions as to why someone would purchase Brazilian NFC or FCOJM versus domestic?

MR. FREEMAN: What level of the purchase chain?

MR. GOLDFINE: I'm talking about the remanufacturers and the packagers.

MR. FREEMAN: I can't speak to the packagers of NFC or the remanufacturers of NFC because I don't do NFC. As to the repackagers of FCOJM, I am a repackager of FCOJM. I mean, I manufacture Florida FCOJM and put it into retail packages, so it's not

sold on to someone else, I do it myself.

In terms of our customer base for bulk FCOJM that's reconstituted outside the state of Florida, they rely on us to make grade. They tell us I have Florida/Brazil on my label and I want it to be 94 score and it's got to have a minimum end value, which is the color, to make 37 grade. And they rely on us to do it. So I turn around and say, okay, to do it, I need to blend X percentage Brazilian in with the early and mid to make grade.

They don't make the decision to buy and blend themselves, they turn it back to the bulk processors, myself or my competitors in Florida.

MR. THOMPSON: From a purchasing standpoint, if you go back a little bit in history, the reason that Brazil became popular in the United States, it was in the 1980s when we had significant freezes and at that time I worked for Coca Cola and the whole issue was we needed two supplies. We could not afford to have significant freezes and loss of crop and if we did not have another supply to replace that we would lose shelf space and it would cost us significant to replace that shelf space.

Back then, in the '80s, FCOJ was the bigger part of the market and NFC was the smaller part of the

market. Today, that's turned around where NFC is almost 50 percent of the market.

Now, as a wholesaler such as Coke or Pepsi, they can't afford not to have supply and what they've done is they have contracted with the Brazilians to have a source of NFC for the future because they can't afford three hurricanes hitting Florida and not having the product.

Now, the issue with NFC is you have to make long-term contracts and you have to take that product year by year because you can't wait until the hurricane comes and then have Brazil produce the NFC because of the opposite seasons. So it's very critical that for these branded products, for them to be able to begin to make long-term contracts for NFC and to have that as an alternate source as we have freezes or hurricanes or whatever we might have, because NFC has become so important in the marketplace.

MR. EMMANUEL: I would add to that really along the same lines with respect to our customer base on NFC, what they're really doing is supplementing their own domestic production in an effort to improve and maintain the consistency of their product throughout the whole marketing year.

They look for, again, some of the specific attributes on a product coming out of Brazil with respect to color, with respect to ratio, but particularly in the period where they're relying on stored product that they produced in Florida from the previous season, they're looking to supplement with a more fresher product shipped directly out of Brazil in a short time period after it's produced to help maintain their overall consistency of their product. Forty-eight of the petition states that the only significant physical differences between FCOJM and NFC is the level of concentration as measured by degree bricks. FCOJM is highly concentrated, typically, it's 65 degree bricks, while NFC is produced at single strength. Maybe Professor Rice or anyone else on the panel can speak to this issue. But, do you agree with that statement? And if you disagree, how many physical differences are there between FCOJM and NFC and what are they?

MR. RICE: A couple of physical differences would have to do with the amount of extractor pressure and the finisher pressure that you apply to the raw oranges when you're getting the juice out of them. If you tighten up on your finisher pressures and extractor pressures, you can get a lot of things in

that juice that came out of the peel and it really doesn't taste too good. You can also take the pulp that comes out of the orange, run it through the system, add water back to it, and extract a certain percentage of the soluble orange solids that is in that and add that back to FCOJM in line. You cannot do that when you produce NFC. That helps you get a much better tasting and much better quality product. It also gives you a higher yield on the FCOJM than you would get out of the NFC.

MR. GOLDFINE: Does anyone else want to add to that?

MR. DUNN: To me, the obvious difference -- they say it's physically the same. Well, you know, Dom Perignon is the same as Cold Duck. It's physically the same as Cold Duck. No human being would confuse those two beverages. The consumers make a clear difference and that's as much importance as anything else.

MR. KALIK: Let me add one thing. You know, there was a point made this morning that you could take NFC and concentrate it and turn it into FCOJM. You can't take FCOJM and unconcentrated and turn it into NFC. And I think that's as fundamental as it gets.

MR. FREEMAN: One other, at the risk of actually -- it's confirming what Jerry Rice said. When you take a number of oranges and assume all the oranges are the same, in terms of -- at the end of the process, you can probably get 110 percent more single-strength orange juice by going the concentrate route than by going NFC, because of water extracted soluble orange solids added back through -- added back in line, as well as what is something called core wash, which increases the yield even more. So, you get more drinkable juice using concentrate than you do with NFC, by a factor of, I think, about 10 percent.

MR. GOLDFINE: Are NFC and FCOJM interchangeable? Why or why not, in addition to any of the other reasons you've already stated?

MR. EMMANUEL: I think we would be repeating ourselves, but the --

MR. GOLDFINE: Okay, that's fine.

MR. EMMANUEL: -- customer perceives it as something totally different and they are not interchangeable.

MR. GOLDFINE: Okay. That actually -- and this might be something, Mr. Dunn, you can put in your post-conference briefs, because it's something I'm not clear on here. On the customer perception, I mean, if

we're talking about the like product being either one or two like products, is the customer the, I guess the remanufacturer or the packer, or is it the ultimate -- you know, the person, who goes into the grocery store and buys the juice on the shelf? Because -- and let's assume for a second that it is the packers or the remanufacturers, okay. I mean, do they perceive -- do those entities perceive -- why do they purchase, say, NFC versus FCOJM? Is it --

MR. RICE: Mr. Goldfine?

MR. GOLDFINE: Yes.

MR. RICE: It's all driven by the consumer. You, for example, when you go to the supermarket, you probably pick up the not from concentrate and are willing to pay 35 to 40 percent more for it. Now, if it gets down that we're on a promotion, where it's -- where the not from concentrate gets down to a ridiculously low price on a promotion or something, maybe 99 cents a half gallon, you might be willing to switch and substitute at that point. But, generally, it gets a much higher price, because the consumer drives what the intermediate processors are going to be putting in the packages for them.

MR. GOLDFINE: Okay.

MR. DUNN: Just to finish. I don't have it

off the top of my head and we'll address this in the post-conference brief, but as I recall, the criterion is consumer perceptions. But, whether it's consumer or customer perceptions, the customer is going to buy what the -- if the customer is the wholesaler, the customer is going to buy what the consumer wants. And the facts is, when you have one product that's priced higher than the other, but is gaining market share, and the other product, which is priced lower, that is dramatically losing market share, it's obvious that the consumer perception of the products are extremely different.

MR. GOLDFINE: On common manufacturing facilities, production processes, and employees, I think Mr. Emmanuel or Mr. Freeman, this was touched on earlier, but are there common manufacturing facilities, production processes, and production employees for both FCOJM and NFC? And if there are not, can you explain to me what the differences are?

MR. EMMANUEL: Yes. There are common processing facilities, common employees. But, again, the settings and the operation of the equipment is very different. But, they are flexible to use for either product.

MR. GOLDFINE: You had mentioned a special

extraction line, I think. What is that?

MR. EMMANUEL: A special extraction set up use the same machine, the same line, but you change the settings and you make it -- when you're running an NFC product, when you're done running an NFC product, you're making a FCOJM product, you'll go into those machines and set them up differently.

MR. GOLDFINE: Okay. And, of course, the evaporation equipment does not get used for the NFC.

MR. THOMPSON: I have -- in my Auburndale plant, I have three lines. One of those is set up solely for NFC. And then when I went into NFC a few years ago, I had to build a significant -- make a significant investment in storage capacity. So, my storage is totally different, significantly more expensive. So, those things are segregated even within the plants.

MR. GOLDFINE: Why is NFC priced higher than FCOJM?

MR. EMMANUEL: He just referred to it. He had to spend a lot of extra capital. And I think the Petitioners even referred to it for storage and handling facility. It's in excess of six times as expensive on a single-strength gallon bases, as well as the special selection of fruit and the costs

associated with that.

MR. THOMPSON: I, also, think the consumer perception, that the product is better, and that the consumer is willing to pay that differential, as well.

MR. GOLDFINE: This question is for Montecitrus counsel. Maybe you want to just address this in the post-conference brief, but I'll ask anyway, whether organic should be included in the scope here. Are you suggesting that or not?

MS. DEBUSK: We believe that organic should actually be excluded, but we think that there would have to be a definition worked out to exclude it from the scope.

MR. GOLDFINE: Okay. And this is for Mr. Dunn. What is your position on who should be included as domestic producers here?

MR. DUNN: We believe that all of the companies here before you are domestic producers. There's no doubt that they product FCOJ, all of them, and two of the three produce NFC, as well. In Florida, they are domestic producers. Obviously, they are related to Brazilian -- some Brazilians. In Dreyfus's case, they're related to French -- they're owned by a French company. But, the fact that they import juice to blend makes them no different from the

Petitioners, in this case, who also import juice. Everybody produces domestically. Everybody imports and blends. So, we don't see any real basis for exclusion of these companies from the domestic industry. But, we will go into that in further detail.

Now, the fact that they are related, again, the definition of domestic industry in the statute says that if they are related to foreigners, but they are appearing in their capacity as domestic producers, and it is the position that you have heard here all afternoon, that it is their domestic production of orange juice that would be harmed by additional tariffs or restrictions on importations, it is their domestic production that they are concerned about and, therefore, we see no basis for excluding them from the domestic industry.

MR. GOLDFINE: And this might be another point for the post-conference briefs, but do you agree with the Petitioners that it's all growers and processors that should be counted here in the domestic industry?

MR. DUNN: I think that requires a little bit more examination than I'm prepared to answer right now. I'd like to look at that a little bit more.

MR. GOLDFINE: Sure.

MR. DUNN: We will address it in our post-conference brief.

MR. GOLDFINE: And if you could address the issue under whether we find one or two like products, to do the analysis under, you know, whether the grower should be counted.

MR. DUNN: We'll do our best.

MR. GOLDFINE: Okay. Do --

MS. DEBUSK: Just in response to that from Montecitrus, if I could just add one thing. If for some reason it isn't excluded from the scope, then we would argue that organic should be treated as a separate like product. It's its own little beast out there.

MR. GOLDFINE: Okay. Is the captive production producer at all an issue here? Maybe for Mr. Dunn.

MR. DUNN: My first reaction is I can't see it; but, again, I'm loathe to commit myself on such a point without having a little bit more time to look at it. We will look at it and if we think it is, we'll address it in the post-conference brief.

MR. GOLDFINE: This is for Professor Tilley. Those charts you put up, several of them refer to

market share. What was the market?

MR. TILLEY: In the full report, you'll find exactly how we define the market. It's difficult. We took the Florida movement. We had to adjust for future deliveries and receipts, took out exports, then included imports into non-Florida ports in most of what I did, as part of the overall, tried to measure the aggregate size of the market. And we combined all -- I combined all forms of orange juice.

MR. GOLDFINE: So, those figures were for FCOJM and NFC lumped together?

MR. TILLEY: I converted everything -- I tried to convert everything that is single-strength juice and added them together.

MR. GOLDFINE: And this is for Mr. Dunn, also. In the post-conference briefs, could you address the issue of why we should be looking at the futures prices here, as a -- I mean, why are we looking at those, I guess is my question?

MR. DUNN: We will do so, but I'd like to turn this over to Mr. Freeman, for him to discuss a little bit more about the importance of the futures market.

MR. FREEMAN: I think both the Petitioners and the Respondents agree that the price that's quoted

daily on the New York Futures Market, the New York Board of Trade, is an important price that is universally looked at by the industry, as a whole, and by that I mean the supermarket chains, who buy the stuff, as well, as a gauge to what's happening and where the prices are. And so, therefore, it's a benchmark anyway. I mean, it gives you an indication of where prices have been and where they're theoretically going.

MR. DUNN: The other point, to expand on that a little bit, is that a lot -- a large portion of juice that is sold in the market -- FCOJM, I'm sorry -- FCOJM that is sold in the market is sold on what's called basis futures. That is, the price that we're going to sell it to you on such and such a date is going to depend on the futures price at that time, plus or minus a certain amount.

MR. FREEMAN: Without going into price risk management and hedging 101, which I'm perfectly capable of and willing to do, it's a pricing -- futures are used as a pricing mechanism for a significant amount of the FCOJM that is bought and sold in bulk in this country. And to explain why, then, opens the door to say, okay, let me explain how futures pricing in cash markets in exchange for

physicals for futures works.

MR. GOLDFINE: Okay. And if in your post-conference briefs, you could maybe -- if you could bring to our attention any case before the Commission has looked at futures prices in making a present injury determination, I'd appreciate that.

Someone had mentioned, it may have been Mr. Rice, different formulas for how NFC is priced. I'm not sure who mentioned that. But, could you just give a couple of quick examples of the different formulas?

MR. RICE: Some of these gentlemen may be better qualified than I am to answer that question, but some is sold on a single-strength gallon basis; some is sold on a basis coming right off of the production line that go into one of the intermediate handler's plants; some is based on a futures price, plus or minus -- generally plus some figures; some is based on a fruit cost, plus processing charges and storage charges and operating margin. There's just all sorts of different ways to come up with a price to the intermediate handlers.

MR. GOLDFINE: Just one last question. What should we do with -- this is for Mr. Dunn -- on the issue of -- there seems to be some allegations here of transshipments or that issue has, at least, been

raised. What should we do with that?

MR. DUNN: That's a very --

MR. GOLDFINE: If anything.

MR. DUNN: I'm not sure that there's anything you can do. Basically, that allegation that was contained in the petition says, somebody is committing Custom's fraud by calling juice that comes from, let's say, Mexico, as a Mexican juice. These companies, obviously, are not, to my -- there's no indication that these companies have any involvement in any of that. But somebody -- who ever did, the proper way of dealing with that, if there is a problem, would be with a case of Custom's fraud. But, they provide no basis for that except, well, I've sort of heard that some of the stuff is coming in improperly with an improper country of origin. We don't really have any facts on which to substantiate that.

More importantly, you have to rely -- the Commission has to rely on the import data as they are. You can't say, well, we're not sure about the import data because there may be some Custom's fraud. How much Custom's fraud? How much incorrect declaration? There's no evidence as to any of it, frankly.

So, I don't see that you can give that any

weight at all.

MS. DEBUSK: May I add something there, because, actually, the company Montecitrus's name has been bandied about in connection with these alleged transshipments. And, basically, I'd just like to strongly state that there are no illegal transshipments. Montecitrus has used a tolling arrangement for many years for processing its oranges. It produced the oranges grown by its members. It's been doing business that way since 1985, for over 20 years. And it's simply preposterous to allege that Montecitrus can't export its own juice to the United States or that selling its juice to another party for importation is, in any way, illegal.

MR. GOLDFINE: One other thing, Mr. Dunn.

MR. KALIK: Can I just make one comment for that?

MR. GOLDFINE: Sure.

MR. KALIK: At least probably 98 percent of all the juice coming from Brazil is coming on tanker ships directly from Port of Santos to whichever U.S. ports they are. So, there would be no ability to somehow divert to Mexico or elsewhere, pick up juice and bring it in. So, there's just no basis for such an allegation.

MR. GOLDFINE: Just so I understand your view of the case on present injury, the hurricanes, the low-carb fab, are those -- should we view those as kind of conditions of competition or do those go to causation here?

MR. DUNN: They are conditions of competition, which directly go to causation. The causation argument is that prices in this market are determined by domestic supply and inventory availability, domestic product. Those factors dwarf imports, in terms of their influence in the market. Therefore, in periods of high supply, which you have now, and coincidentally, declining demand -- we have data that show that the retail consumption of FCOJ is down 9.1 percent. That's a large drop since 2000. When you have large crops, domestic crops, and declining demand, the price in this market is going to drop. Imports show, as Professor Tilley has shown, imports really don't show any influence on domestic prices.

Now, having said that, what happens when you have a hurricane that drops the size of the Florida crop, both short-term and at least in the intermediate term significantly, the largest drop in production that has been seen in 30 years, when that happens,

what's going to happen? The price is going to rise and the price has risen and will continue to rise. And essentially, what we have is the causal relationship is between domestic production and the condition of the domestic industry.

If there was any injury, that injury ended with the hurricanes, which caused the prices to rise again. People are going to make more money now. The growers are going to get a higher price for their fruit than they did a year ago. And that's the essence of our argument.

MR. TILLEY: They said that they needed 75 cents to break even with their fruit. Well, today, prices are 90 cents. And they're only talking -- they're 90 cents for early and mid, or the early season product. Quoted prices for Valencia today have already reached $1.10, compared to the average cash price last year of about 76 cents. So, these prices have increased dramatically.

Secondly about pricing with growers, only about 30 percent -- and the prices they mention, only about 30 percent of the grower market or what we buy as fruit is in the cash market. Seventy percent of the fruit that we buy in Florida either has some kind of floor price and those floor prices over the last

several years have probably ranged anywhere from 75 cents to over a dollar. So, the growers that they are representing is only about 30 percent of the cash market. The rest of the growers are signing these long-term contracts, in order that they can break even and where they take no risk, except for the weather and things that happen by way of God.

MR. GOLDFINE: I have nothing else. Thanks.

MR. CARPENTER: Mr. Fetzer?

MR. FETZER: Jim Fetzer, Office of Economics. I'd like to thank you guys for coming out today, again, in the cold weather, from warmer clients and some circumstances. I first wanted to take a look at the correlation charts that Professor Tilley was talking about. If you could put those back up, that would be great. And I guess I understand from David's -- sort of following on to David's question, that you're looking at a sort of composite between both the NFC and the FCOJM.

MR. TILLEY: Let me explain why I did that. NFC is a very recent -- you wouldn't have enough observations on NFC imports really to separate anything out and get any correlation in the short time period where you've had any NFC imports. So, I lumped it all together for purposes of --

MR. FETZER: Did you look at just NFC and FCOJM separately? Or --

MR. TILLEY: No.

MR. FETZER: No, okay.

MR. TILLEY: Everything we did, we tried to get an aggregate market size number, which includes all forms of orange juice at the retail level or at the wholesale level, as well.

MR. FETZER: Okay. Can you add those things together really? I mean, if you're looking at the retail --

MR. TILLEY: You can reconstitute -- I mean, you can convert -- mathematically, you can convert anything from any bricks to any other bricks. The conversion tables are readily available. Is it fair to add them all together, in order to measure the size of the market? I think it's fair to add them all together, if you want to know what the aggregate number of -- if you want to measure size of the market, in terms of how many ounces of orange juice is going into consumer stomachs, then you have to add them together.

MR. FETZER: Okay. But, if -- I mean, I was assuming this was something that you were, you know, showing to have some type of injury analysis or

something. Could we use it for that, if you're proposing two different like products, I guess is the question? Is it fair to put them both together, particularly on the import side, because you're combining the Brazilian imports of both?

MR. TILLEY: Again, I was trying to get a data series that was consistently done. You could leave out the NFC, if you wanted, and I could redo it. But, I don't see any need to do that, given the small volume of NFC and it was all late in the period.

MR. FETZER: I'm just asking. I'm not, you know --

MR. TILLEY: Yes.

MR. FETZER: -- I've heard all the arguments, how different they were, and I wasn't sure how that would apply here. Did you --

MR. KALIK: Could I just make a comment about it? I think the point that Professor Tilley is making is NFC -- as we've stated, NFC imports have just occurred starting in mid-2002. So, he doesn't have enough data points to take back NFC and do a separate analysis. Backing out the analysis, backing out NFC from the data would not have any significant effect on the overall analysis and we would offer that up in post-hearing.

MR. FETZER: Okay.

MR. TILLEY: I'd also like to address the question and why we use futures prices. And I'll maybe put on my academic act and do a little futures 101, although Randy might be able to do it. He would be a great guest lecture in my class, I'm sure. But, in the futures market, if you have better information than is contained in the prices, you'll have all kinds of incentives to take a position in that market to take advantage of that information. And it provides a focal point where everybody with information and thinks they know better what the price ought to be can act on that information, take a position. And the only thing that's true in the futures market, you can buy low and sell high or you can sell high and buy low and you can make money either way. And that market works. And for someone to assert that a futures price is not fair market value and they know that there is some other price that is a fair market value, I say to that person, take a position in the market and prove it.

MR. FETZER: But -- okay. No, it's --

MR. TILLEY: I don't think I'm speaking out of school and that's true in any futures market that's openly traded. If you've got better information, go

to the market and prove that your information is better.

MR. FETZER: Are you proposing that the futures price would be better than whatever the market price is at a given point in time, in terms of determining whether it's injury or what price levels are?

MR. TILLEY: I think when you get down to transaction prices between customers and firms, you have contractual arrangements and long-term commitments, one to the other, that may make it more difficult to describe the transaction and the price of that transaction. There's all kinds of characteristics of individual transactions that can make those prices different than what you might think is 'normal.' In the futures market, the commodity is defined. The trading conditions are defined. The delivery points are defined. The contract is defined. The quality standards are defined. And it's always the same contract, interchangeable contract being traded. We can't say that about the other individual transactions that these gentlemen make with their customers.

MR. FETZER: The futures price that is here, does it combine both types of orange juice in it, for

the whole period or for part of the period?

MR. TILLEY: It has -- it's a daily closing futures price average for the quarter. Actually, in my full report, I actually do the last 10 days of a quarter and I describe why I do that. And we roll over to -- it's a nearby contract and we roll it over when the options market closes on that contract, which is about the third week of trading in the month before delivery. When you're looking at futures prices, all kinds of things can happen in a delivery month. So, we didn't look at the delivery prices in the delivery month.

Someone suggested earlier that someone delivered orange juice into the futures market and that was somehow bad behavior. Well, there was a seller of a futures contract that sold in the futures market and held that position into the delivery month. There was also a buyer of the futures contract that held that position into the delivery month. Both of them were too hard headed to get out of it by taking the offsetting position, one way or the other. And that happens. But, all kinds of -- anybody doing an analysis of futures prices, you try to roll it over and look at the next nearby. And if you're doing hedging programs, you probably roll over at about the

same time. You don't hold that hedging position probably into a delivery month and, particularly, into a delivery week, because you may end up -- you know, the old story we tell about some dentist in Cleveland that's been trading egg futures and gets a delivery notice that he's got some carloads of eggs in some warehouse somewhere, that they own all of a sudden, you know, because they didn't -- weren't paying attention. It makes sense to pay attention in this market and these guys do.

MR. DUNN: Just to answer the question a little bit more pointedly, the futures prices are only FCOJM. It is a very specific contract. There's a uniform contract. It has to be a certain grade. It has to be a certain condition. It has to meet all sorts of very specific contracts. And that's what's traded. To get to your question, is that different from the market. That is the market. When you get outside of that, well, what's the grade, what's the condition, what's the terms, have everything that varies. The futures market is the only thing that gives you uniform conditions that allows you to say, this is what the market is. It tells you what trends are. It tells you when things are high and when things are low. So, it really is the only clear

universally accepted reference point for what the price is.

MR. TILLEY: And they use it as a reference point and contracts will say cents above -- in some cases on other commodities, cents below futures.

MR. FETZER: But, this does include also NFC, too, in terms of --

MR. DUNN: No.

MR. FETZER: Not at all?

MR. DUNN: No, it does not. It is a specified contract, which does not include NFC.

MR. TILLEY: You could not deliver NFC against this contract unless you concentrated it first.

MR. FETZER: Okay. So --

MR. TILLEY: And then it would have to meet contract specs and it would have to make grade.

MR. FETZER: So, I guess I'm confused why you're looking at the correlation between both types of orange juice and the crops -- the crop report is both types and in the futures prices, there's just one of them; right?

MR. DUNN: The crop report is oranges --

MR. FETZER: Okay.

MR. DUNN: -- boxes of oranges that are

going to be used to produce juice.

MR. FETZER: Okay.

MR. DUNN: And the point that Professor Tilley is making is that the futures market, which is the reference price around which contracts are priced and traded and actual juice is traded, there is a relationship between the size of the orange crop in the United States and the futures price.

MR. TILLEY: And fundamentally, NFC has been growing and FCOJM has been declining in volume. But, still, you can price potentially I guess, I don't know whether they do it or not for sure, but they can price NFC off of futures. But, I suspect they don't do it, because there are all kinds of specific specifications on the NFC and it really isn't deliverable there. But, you can cross -- what we call cross-hedging in other commodities. You can hedge something that's not traded against something that is traded, as long as the prices are highly correlated. And that's a normal behavior in other commodity markets.

MR. FETZER: Something else I noticed here, we're talking instead of actual crops, about crop reports. And so, we're looking at -- would that be the same argument as using the futures price for using

something that's --

MR. FREEMAN: Let me address that one.

MR. FETZER: Yes.

MR. FREEMAN: There are -- remember 'Trading Places?'

MR. FETZER: Right, Eddie Murphy and --

MR. FREEMAN: Eddie Murphy and --

MR. FETZER: Dan Akroyd.

MR. FREEMAN: One of the things that I tried to phrase very carefully is that it is the perceived future relationship of supply and demand that determines where the markets trade. Now, in 2003, on October 10th, if you go back and look at a chart of futures -- I mean, you can look at a daily continuation chart starting in about August of -- July of 2003 through July 1, 2004, and you can see where there are gaps in the market. And someone, who watches it, as closely as I do, can say, that's a crop report day and the crop report was bearish, because all of a sudden, you'll see that on October 10th, or whichever day it was in 2003, the futures market went down when it opened an hour-and-a-half after the crop report was released at 8:30 in the morning. And the USDA said it was 252, right -- 252, which was an unheard of high price. And so -- high production.

And so, the fact of the matter is that starting in December of 2003 and again in January, February, March, April, May, June, the USDA started reducing the crop from 252. So, it ended up only being 242.

I will tell you without question that had the USDA said 242 in October of 2003, instead of 252, there would have been a different reaction in the market. It would not have been -- it would have been down, but it would not have been as violently down for a number of reasons: 240 is not that much more than 230 and we had it 230. Get over 250 and it becomes a psychological barrier, sort of like $30 oil. When you go over $30, something happens. So, it is the perceived future relationship of supply and demand, which changes daily.

MR. TILLEY: And I think one of the challenges of using the crop report is the -- it's an expectation, but by July it's pretty deemed accurate, because most of the processing is already done. In October, everybody is looking at an expectation, but there's some variance around that expectation in October. As you go through the season and the boxes are actually harvested and they exist and they're proven to be there, then the expectation changes or the variance around that expectation changes. So,

that's actually -- if you know much about econometrics, it can be a very complex errors and variable problem, because, you know, the variance around a forecast, the further out it is, it's higher.

MR. FETZER: Let me move on a little bit. Mr. Thompson had some testimony earlier that the -- I believe that the Brazilian imports were responding to changes in the U.S. crop, right, in terms of if the crop was very bad, there was more imports and fewer, if there was -- fewer imports, if the crop was better. And I guess I don't really see that in your correlations, because you're saying there's a negative correlation between the crop report and the futures price, but no correlation between the imports and the futures price. And I would think if the laws of transitivity hold, that that would -- am I missing something, in terms of that?

MR. FREEMAN: Can I address that?

MR. FETZER: Sure.

MR. FREEMAN: You're missing something by the period you're looking at.

MR. FETZER: Okay.

MR. FREEMAN: Unlike soybeans or other crops that have a one-year cycle, this is a long cycle, and you need to step back and look what happened -- look

at what happened from probably -- you've got to back to 1979. In 1979, Florida produced 207 million boxes, 207 in 1979. Nineteen-eighty-six, it was 107, half. You have the population growing up, so you've got demand -- per capita consumption stays flat, you've got demand going on, a series of freezes. Florida interest reached out, flew to Brazil, which is one of the other places you can grow oranges, and said, we've hired Anita Bryant successfully to market orange juice and we don't have any, grow some for us. So, you had this state of affairs that Brazil ramped up as fast as they could, pulling oranges that had been around away from that domestic market. They outbid the fresh domestic market.

So, you had during -- and I wasn't -- I've only been in the industry since 1988.

MR. TILLEY: And he's proving that, because Anita was prior to 1979, I think. But, at any rate, I think if I had taken a data period, including the 1980s, that we would have seen exactly that, because if you look at the crop report here, with the exclusion of 1994, and then you had a little bit of a low crop in 1999-2000 --

MR. FREEMAN: Ninety-eight, 1999.

MR. TILLEY: -- 1998-1999, I'm trying to

read the chart, but at any rate, 1998-1999, you really had a fairly high and consistently high, strong crop report throughout the 10-11 years of my data. So, if you go back in the 1980s, when you had the freeze damaged crops, you would have seen imports responding to the freeze damaged crop and the negative correlation that was mentioned.

MR. FETZER: What would happened if we just focused on the period of investigation, we shorten this up, would these correlations change much? Did you look at that at all?

MR. TILLEY: Number one, you don't have enough degrees of freedom to get the correlations you want, unless you go to daily. And even then, I don't think you get it, because, you know, ships arrive on a day, does that mean, you know -- you just wouldn't have enough quarterly observations to do much.

MR. FETZER: Okay. You measure imports. I'm assuming it's both kinds of orange juice --

MR. TILLEY: Yes, sir.

MR. FETZER: -- in volume. Did you -- would it be appropriate, also, to look at unit values for those two?

MR. TILLEY: I did not look at unit values of the two and I would suspect they're very different.

MR. FREEMAN: I would argue that certainly in my company's case, looking at unit values from that perspective would be not the right thing to do. When we buy from a related company, we are under an obligation to comply with Section 42 -- Section 42 of the Internal Revenue Service Code, which means that don't overpay for the stuff, because then the IRS will come and jump up and down on your head for transferring profits overseas. So, my guidance is to err on the side of caution, which means that I would underpay. Now, that has nothing to do with the price I sell the stuff to the first unrelated customer for at all.

MR. FETZER: I mean, is that going to be a problem with our pricing data, also?

MR. TILLEY: Yes. If you're using Custom's data, yes.

MR. FETZER: Well, no, questionnaire data.

MR. FREEMAN: I don't remember questionnaire data asking it for our pricing.

MR. DUNN: Yes, quarterly prices.

MR. FREEMAN: Selling prices.

MR. DUNN: Quarterly selling prices.

MR. FETZER: Selling prices, not imports, yes.

MR. FREEMAN: Quarterly selling prices, that should not, then.

MR. FETZER: Okay.

MR. FREEMAN: That should not.

MR. FETZER: Just checking.

MR. DUNN: The issue on the import data, by the way, not just import prices, but import quantities and the number of data points, you can really -- the reason that we use quarterly data here is you really can see what's honestly going on. When you look at the Commission's traditional way of looking at it, which says, okay -- by the way, calendar year 2001, the Petitioners had a lot of crop years and they didn't say which crop year they were talking about, Brazilian crop year, U.S. crop year. But, the Commission's traditional data is to say, calendar year 2001, calendar year 2002, calendar year 2003, first nine months 2004, four data points -- well, five, if you include -- if you have the interim comparison.

The problem you have with imports on that, you see the average across that period of imports is pretty much flat. However, you see what seems to be a drop in 2002 and an increase in 2003 calendar year. What happened? If you look at that on a monthly basis, you actually had a very significant importation

registered entries in January of 2003.

Now, it takes about three weeks for a boat to get from Brazil to the United States. Those tankers have a lot of juice in them. If something arrives on January 1, as opposed to December 31st, you can see a big increase in January. If you look at those things on a monthly basis, you will see that January of 2003 is way -- it's off the charts.

MR. FETZER: I think actually the net import --

MR. TILLEY: Yes. Let me address --

MR. DUNN: My point is, you have to smooth it out. You have to look at more data points than just four like that.

MR. TILLEY: One of the things I would invite you to look at -- is it Fetzer, is that how I say it? In my full report, you'll find a correlation matrix. You'll find out in the full report, the Brazilian imports are indeed negatively correlated with the crop report. The crop report is negatively correlated with the futures price. If both those things are true, you would expect that imports go up when the futures price go up. But, it's not strong enough to show up in the direct correlation between the imports and the futures price. But, the imports

are negative correlated and significantly correlated with the crop report. When the crop report is high, imports go down, historically, which makes sense.

MR. FETZER: Mr. Freeman, I think, wants to say something.

MR. FREEMAN: Yes. The one other observation I'd have is that we've all mentioned and the Petitioners have mentioned that everybody uses the stuff and everybody buys some of it for some reason. Since the last really low crop in Florida was 1988 and 1989 -- I mean really low, it was like 188 million boxes -- since then, we've had between 203 and 242 or 254 million. Those are relatively high levels. The import levels of Brazilian over the past years have gravitated down to the minimum level that this country wants anyway. There's an absolute minimum level that under -- whatever it is -- confidentially -- I will tell you that my customers say, I want to have, for flavor purposes, a minimum of this percent of Brazilian in the 12-ounce cans that you supply to me. I would suspect that people, who manufacture for other -- I know the people, who also have that. So, there's an absolute minimum level that's always going to come irrespective of price. That minimum level keeps, you know, going down, down, down, as prices go lower, and

it would take -- it would be expected that higher prices would drag product into the market. Markets behave that way.

MR. FETZER: Okay. And one thing I'd like to add, and I address this both to the Petitioners and the Respondents, is that if I could -- in your post-hearing submission, you could provide electronic copies of the data used in whatever charts you provide here or in your post-conference brief. Did you have a comment?

Mr. Dunn, you made a comment during your opening remarks that the price, I believe, had increased for orange juice recently by 55 percent. And different data that the Petitioners have presented that I have seen, I haven't really seen that kind of spike. So, I was wondering is it a different data source or you're focusing on a specific period?

MR. DUNN: If you look at the futures price in -- what was it, June something, 17th of 2004, it was about 54 cents, 55 cents.

MR. FREEMAN: 54.20.

MR. DUNN: If you look at it today, it's 84 cents, 83 something, today or yesterday -- 83.75 yesterday. The difference between 54 and 83, I think you see where the --

MR. FETZER: No, I was just wondering, okay. So, you're talking about a change in the futures price by 55 percent?

MR. DUNN: Correct.

MR. FETZER: Okay. I just want to make sure, so I can sort all of this out. Sometimes, it's just a matter of looking at different periods. Did you want to add something, Mr. Freeman?

MR. THOMPSON: You can also say that for fruit. I mean, last year, early and mid, fruit was about 65 cents is what we paid for fruit. And today, the price for early and mid is 90 cents. So, again, that's almost 50 percent.

MR. FETZER: Okay. That's market price, because there's no future -- there's no futures market for juice -- I mean, for fruit, right?

MR. THOMPSON: There's no futures market --

MR. FREEMAN: No. When we quote prices, one of the things that slip through that I think should be pointed out, when you quote prices for fruit in Florida, you always quote two numbers: 80 and a buck; 65, 85. There are two varieties. They have different values. Early and mids are worth 15 to 20 cents a pound less than Valencias. They're worth that for a reason. They have low color. They gel up. They have

high viscosity.

Last year, we paid 60 -- last year, the average price was 65 cents for early and mids. Early and mids this year are worth 90 cents, trading at 90 cents. And then when they said it cost 75 cents to grow oranges, that's 75 cents to grow a blend of early mids and Valencias. So, a 90 cent early-mid market implies $1.10 Valencia market. So, we're a buck on average, 90 cents for early-mid and --

MR. FETZER: Okay. Thanks. That's very helpful. Petitioners, in the petition, I believe, stated that price is very important, maybe the most important -- the only factor. I don't remember exactly how they characterized it. So, I'm wondering what the view of the panel is, the importance of price versus, let's say, quality or other factors in determining a purchase. How important is price versus those other factors?

MR. FREEMAN: It depends on what level in the chain you're talking about and who you're dealing with. If you're dealing with Wal-Mart, one of our biggest customers, price is pretty important. If you're dealing with Kroger or any other supermarket chain, price is very, very important. But, you have to meet the -- the reality is that most of the players

in Florida that are here can meet the quality. We can all make assertions about how much better we are or worse we are than anybody else. But, for frozen concentrated orange juice, for manufacturing in a bulk tanker, the distinguishing quality between mine and my competitors isn't that big. And as long as it meets the customer's minimum requirements, which you're obligated to do, then it becomes all a matter of price and service.

MR. FETZER: Is that the same for NFC, also? If you could just say yes into the microphone for the record. Mr. Emmanuel?

MR. EMMANUEL: You're asking if it's the same for NFC?

MR. FETZER: Yes. Has price have a similar importance or --

MR. EMMANUEL: Again, if you're comparing like products, then it does become a matter of price. But, in NFC, there tends to be more variation, in terms of what the customer is looking for specifically. So, there's a little bit more differentiation competitor to competitor, in terms of what you bring to the customer.

MR. FETZER: Is that quality differences? Or is it shipment issues? Or --

MR. EMMANUEL: In the case of NFC, yes, different customers have different requirements.

MR. FETZER: So, different preferences?

MR. EMMANUEL: Different preferences.

MR. FETZER: And could you give an example?

MR. EMMANUEL: One might be ratio. One might be bricks. We mentioned the restriction on a certain variety of fruit, et cetera, et cetera, et cetera.

MR. FETZER: Okay. Any other thoughts on that?

MR. TILLEY: I think unless you have a description, if you're talking about transactions prices, if you don't know what you're selling, what's the meaning of it. If you don't have the product specs in the deal and including in the product specs the delivery time, the delivery location, and the mode of delivery, as well as the quality specs, what does the price mean? It's meaningless without having quality specs on it.

MR. FETZER: So, you're saying that quality is important?

MR. TILLEY: It is in every transaction that any of these guys do and anybody else in business do. I mean, your credentials are important to you and

determine partially how much you get paid. That's a price, isn't it? Do your credentials matter? Absolutely, they do.

MR. FETZER: Okay.

MR. KALIK: On the NFC question, I think it's very important to point out and I think it probably was Jerry Rice's testimony that there are essentially three or four major branded marketers of NFC. You know who they are. It's Tropicana, Minute Maid, Florida Naturals behind us, in terms of branded. Each one has their own unique quality that they sell to the consumer on and Tropicana versus Minute Maid, et cetera. And so, they have very, very specific requirements as to what their NFC has. It may be in their perception, as a company, better. You know, Tropicana is going to tell you that their formulation is better than Minute Maid's formulation. Florida Natural is going to tell you that theirs is better than either of the others. But, they're different.

MR. FETZER: Okay. In terms of supply, Petitioners characterize supply as very inelastic. Does the panel agree with that?

MR. TILLEY: If you're referring to the ability of the industry to respond to a price -- you're talking about price elasticity?

MR. FETZER: Price inelastic, yes.

MR. TILLEY: All right. In the short run, very inelastic, because you can't put trees together overnight.

MR. FETZER: Okay.

MR. FREEMAN: However, in the long run, enormously elastic. In 1989, there was a freeze on December 24th that exacerbated an already relatively tight inventory situation and took prices from a $1.40 to two bucks. In response to that, more than one enormous sophisticated player in the orange juice industry walked into Florida and gave long-term contracts to growers that said for the next 10, 12, or, 15 years, you deliver this to me starting in four years and I will pay you for it. The growers, then, took those to the bank, borrowed the money, and Florida went on a planting spree starting in 1990 that continued on until in 1992-1993, Florida had a crop that was 156 million, 156 million, that she couldn't process. So, Florida's crop has essentially gone from 150, which was unmanageable, to the average of the last five years or four years has been -- and ignoring this year was 230. So, in terms of response to price in the short-term, it takes seven years; response to price in the long-term, enormous.

But the more important thing is, elasticity is a function of the weather, enormous. Ninety-nine-eight to 1999, Florida's crop went to 188, lousy growing season, nothing happened right. Two-thousand-three-2004, everything grew right. It went to an estimate of 252 million boxes. So, you know, it's not price elastic -- price elastic in the short-term -- or supply is not price elastic, but it's elastic for something else, the weather.

MR. FETZER: Thanks. I appreciate that. One last question. How about demand, is that inelastic?

MR. FREEMAN: The -- I don't know. We've struggled with it. The demand -- we think it is. We see evidence of demand being elastic at certain points. What I think we have is we're on a point in the curve where we're inelastic, because we are at relatively cheap prices for orange juice compared to years way back and have been the last 12 years, the last decade. So, there's a point at which we correlated the price of milk, the price of milk and the price of orange juice, and said that as milk went to a point, all of a sudden orange juice became a substitute. But, we've struggled with it and we haven't found anything that we're convinced with.

MR. TILLEY: Most of the published work would say it's inelastic. Again, sometimes we've done short-run, long-run elasticity. I published work years ago and I think I can get you some citations on published work and what the elasticity of demand, what the people doing the work now are using as the elasticity of demand.

MR. FETZER: That would be great.

MR. TILLEY: It's not a problem and it's in published places that makes sense.

MR. FETZER: Thanks. Actually, one more question. I want to just follow-up on something Mr. Freeman, on some of your remarks. You were talking about substitutes, such as milk. How important are substitutes in changing the price, particularly recently in the market? Has any of the prices changes --

MR. FREEMAN: We've had two things going on. I know people that are really young that drink diet Coke for breakfast. And it used to be -- I see some smirks. It used to be a law that you drink orange juice. So, what's happened over the years is, you know, there's this -- the marketing thing is a human being in the United States drinks so much liquid a day. So what you have is a fight for the share of

stomach. And what's going on is this enormous change in the options that people have for beverages to drink. The most frightening one is one that the two biggest branded national marketers of orange juice started, allegedly in response to the Atkins phrase, where they're putting something that is right in the middle or the orange juice cabinet, that they're calling low-carb orange beverage in small print is 50 percent orange juice: Splenda and water. So, I mean, the biggest reason that demand has been lousy for orange juice is competing beverages of all sorts of types that have been thrown out.

MR. FETZER: Thanks. I appreciate your -- that's all my questions. But, thanks for your patience and I've learned a lot this afternoon.

MR. DUNN: By the way, I apologize for a mention of share of stomach now that it's 2:00 in the afternoon.

MR. FETZER: Well, I might have more --

MR. DUNN: Some of us are getting very demanding.

MR. FETZER: No further questions. Thank you.

MR. CARPENTER: We'll try to move on. Mr. Burket?

MR. BURKET: No questions.

MR. CARPENTER: Ms. Mazur?

MS. MAZUR: I just have one request. And by the way, thank you all, very much, for your presentations. They have been very helpful. Would you, in your post-conference briefs, address the reliability of the Petitioners' methodology for presenting apparent consumption and market shares in Exhibit 9 of their brief and should the Commission rely on that methodology for its presentation of the same?

MR. DUNN: We'd be delighted to do that.

MS. MAZUR: Thank you.

MR. CARPENTER: I have a few questions. If I could start with a housekeeping question for Professor Tilley. The charts that you put up on the screen, do you have paper copies of those that you can provide to us?

MR. TILLEY: I believe we do and they're on the table over here. Would you like copies for the staff here right now?

MR. CARPENTER: No, that's not necessary. We just want to get it into the record. So, we'll give it to the court reporter, so she can make it part of the transcript.

MR. TILLEY: It will be taken care of.

MR. CARPENTER: Okay, thank you. You, also, mentioned a couple of times your full report.

MR. TILLEY: Yes, sir.

MR. CARPENTER: Is that something that you're planning to submit for the record?

MR. TILLEY: Yes, sir.

MR. DUNN: Yes, it is.

MR. CARPENTER: Okay. Thank you. I had a general question for the panel on Charts 5 and 6 that were provided by the Petitioners this morning, if you still have a copy of those. Those show the Brazilian FCOJ and NFC export unit values to top export markets and those were described as FOB Brazil unit values. And I was wondering -- and this may be more appropriate for the brief, feel free to answer it in your brief, if you'd like. But, I was wondering if you could explain the discrepancy in the unit values and why -- and in particular, why the U.S. unit value was so much lower than some of the other countries.

MR. FREEMAN: There are a number of reasons. One of them is that for the majority of those countries, the method of shipping the product to the countries involves putting the concentrate into a 55-gallon drum and then putting that 55-gallon drum into

a container or a conventional refrigerated haul of a vessel, shipping it to the destination, taking it out. I can guarantee you that the x factor return of a 53-set export in bulk tankers beats the hell out of, excuse me French, a 65 cent return in drums to Japan. I mean, it's a question, there is packaging in those numbers.

MR. CARPENTER: I see.

MR. FREEMAN: The second thing about it, I've observed, is that when you say U.S. shipments, the U.S. shipments are actually shipments to North America and the Canadian market, which is an almost entirely Brazilian market, because they have no tariff protection for orange juice in Canada at all, is included in those numbers. So, those low numbers relative to the U.S. are sort of meaningless when, in my company's case, practically 100 percent of the product that came to North American over the last 18 months went to Canada at world price.

MR. DUNN: This is one of those charts, I want to say, so many flaws, so little time. I'm not sure where to start on this. It's an average price for an entire marketing year. So, prices can vary depending on what is sold when and where the market is at that time. It is, as they made clear, that is the

price at the port of export. So, it doesn't include freight costs and more importantly, it doesn't include duties. The duty in the United States is the highest in the world. So, the delivered price, which is what this Commission looks at, could be exactly the same once you factor in packing, freight, and duties.

MR. TILLEY: And I think you, also, have to task, are the quality standards in each of those markets identical. In other words, are the delivery conditions in each of those markets the same.

MR. CARPENTER: Okay. Thank you for those insights. A couple of other questions. Mr. Thompson, you had mentioned that demand had decreased over the last four years. You were talking about the Atkins diet being a factor and so on. And Mr. Dunn, I believe, you mentioned later, then, that retail consumption -- well, let me get it -- yes, you mentioned the retail consumption of the FCOJM had declined by 9.1 percent since 2000.

I guess first of all, Mr. Thompson, if you could -- if you have an idea what -- the total of both products, what demand is done over the last four years and if you can provide that in a brief. Could you, please, turn on the microphone?

MR. THOMPSON: NFC was probably up and those

numbers would offset somewhat, but still slightly down.

MR. CARPENTER: Okay.

MR. THOMPSON: We can provide that to you.

MR. CARPENTER: Okay.

MR. DUNN: Mr. Carpenter, we will submit -- there is a very clear chart that we'll submit that was prepared by the Florida Department of Citrus, that we will have. It had actually accompanied one of our questionnaire responses. But, we'll put it as an exhibit to the post-conference brief.

It makes some very interesting points: the demand is down. They looked at various factors as to why retail demand was down. The largest single factor, 42 percent of the reason that they did their little analysis, 42 percent of the reason for the decline was the Atkins diet or low-carbohydrate diet. Not once do they mention import prices or anything like that as having anything to do with the decline in demand.

MR. CARPENTER: You seem to be quoting some specific demand data. So, if you --

MR. DUNN: We will submit that in our post-conference brief.

MR. CARPENTER: Yes, if you could provide

that separately --

MR. DUNN: Certainly.

MR. CARPENTER: -- for the NFC and for the FCOJM.

MR. DUNN: I think it does --

MR. CARPENTER: If you could do that --

MR. DUNN: -- I can't recall exactly, but I think it does have it separately for NFC and FCOJ.

MR. KALIK: I'm sorry, we, also, have long-term Nielsen reports that show the sales figures for FCOJ, reconstituted FCOJ and NFC, which show, and will be happy to provide them in the post-hearing brief that FCOJ sales are down 42 percent. Reconstituted was -- I forget the number, somewhere in the teens, and NFC, as described in earlier testimony.

MR. CARPENTER: Is there -- have there been any studies that indicate, if you do have a situation, which I think, as Mr. Thompson, you had said, were FCOJM is decreasing and NFC is increasing in demand and the two are offsetting each other to some extent, is the drop in FCOJM demand largely explained by the increased popularity of the NFC -- I guess that's one question I had -- as opposed to -- I mean, if you were looking at reasons just for a drop in demand of FCOJM, the Atkins diet would partly explain that. But, it

could also be partly explained arguably by the increased popularity of the NFC.

MR. THOMPSON: I don't think I can give you an exact number of what that is, but I can give you my perception, is that there is that switching. That switching has been going on for a number of years between FCOJ and NFC. And that is partly -- all of it is really, in my perception, is due to the consumer, which has become more health conscious, thinks of fresh products, and they see NFC as more of a fresh product. So, there has been that switching going on. But, I think we probably have some data that shows that.

MR. CARPENTER: Okay. I would invite you, as well as Petitioners, in your brief, to the extent that you could address any shifts in demand and causes for any shifts in demand for each of those two products, individually, and for the product in aggregate.

And Ms. DeBusk, just one additional question for you. You had mentioned about the possibility of trying to get organic excluded from the scope. I was wondering if you had raised that issue with Commerce, at this point?

MS. DEBUSK: We have simply mentioned that

we would be interested in that.

MR. CARPENTER: Okay. You did mention, too, in your testimony that if it's not excluded from the scope, that you would like to -- or you would consider that it should be a separate like product. If you could make -- if you could run through the Commission's like product factors in your brief, that would be helpful.

MS. DEBUSK: Sure, we plan to do that.

MR. CARPENTER: Okay, thank you. I think that's all the questions I had. And, again, we thank -- one more question, Mr. Fetzer.

MR. FETZER: Sorry, I just thought of another one. Sort of a follow-up on what I asked the Petitioners this morning and it kind of follows up on this graph. Do orange juice prices push orange prices or do orange prices push orange juice prices or is it a push in both directions? Okay, do changes in the price of oranges change orange juice prices or vice versa?

MR. FREEMAN: There is a divided school on that, I'm certain within the industry, and I know even within my company. And I'm old enough where I don't care what I say anymore. At one point, fruit got very tight in Brazil and the price of fruit went up, up, up

and everyone said how bullish it is, because the cost of the oranges went up, except for me. And I said, no, all that means is we're going to buy in more oranges that we would otherwise process and for when you bid more and stretch out, it's bearish, because you make more. The same thing applies in any number of commodities where it's the interaction of supply and demand, as opposed to one or the other that does it. The more you make -- and the cure for high prices is high prices and the cure for low prices is low prices, when all is said and done at the end of the day. And the cost in the short term doesn't determine its value. The value is determined by the marketplace, which is a round about way of saying that it's the interaction, as opposed to one or the other.

MR. TILLEY: Since he concluded that, I was going to say, I think they jointly determine. The participation contracts in Florida generally derive the grower return from a pool return. So, you would say that the juice prices -- or the orange price is derived from the pool return, which is a wholesale price. You could argue it that way, as well, on a pool.

I'm not an accountant and pool accounting is almost a specialty in accounting. But, these guys can

describe how their pools work. But, basically, my understanding is that juice from a grower goes into a pool that's sold. Revenues from that pool are calculated. Costs are calculated for that pool. Grower returns are then calculated as a revenue minus cost, roughly. Is that a fair statement? I used to be -- that's basically how those pool returns work.

MR. FETZER: Okay. So, when we're looking at this graph, does that mean it could be -- I mean, these are jointly determined, even if they're correlated? I mean, it's not necessarily the crop --

MR. TILLEY: Well, that's not the price of oranges. That's the quantity in that crop report --

MR. FETZER: Okay.

MR. TILLEY: -- and the price. I have not used prices at any other level than at the futures market level in my analysis.

MR. FETZER: Okay. But even -- I mean, here, I guess -- so, you're saying, the orange crop would determine orange juice prices, but not vice versa? Would that --

MR. TILLEY: Not in the short run. In the long run, Mr. Freeman is exactly correct. If we had high orange prices for an extended period of time, it would cause people to invest in the industry, either

in Brazil or in Florida or in both. But, it takes four to five, six, depending on the geographic location where the trees are planted and the cost of harvesting labor, at what point can you afford to begin harvesting young trees.

MR. FETZER: Okay. Thank you. Anything else? Mr. Thompson?

MR. THOMPSON: I would just say that I think it's happening both ways today. Typically, orange prices will have an affect on juice prices. But, I think what is happening in the consumer market today, because of the issues that we have as an industry, because of the Atkins diet and those kind of things, they're driving that back down the other direction and causing some prices on the orange, itself, pushing that back.

MR. FETZER: Okay, thank you. Thanks. That's all my questions.

MR. CARPENTER: Once again, I want to thank this panel for your presentation and for coming here today and the insights you've given us into this product and the market. At this point, we'll take another brief recess of about five minutes and then we'll have the closing statements of each side, beginning with the Petitioners.

(Whereupon, a brief recess was taken.)

MR. CARPENTER: Welcome again, Mr. McGrath, Ms. Warlick.

MR. MCGRATH: Thank you. Is this a five-minute statement or a 10-minute statement? I wasn't sure.

MR. CARPENTER: Technically, it's 10 minutes. But, if you take five minutes, I'm sure everyone would appreciate it.

MR. MCGRATH: Well, we'll try to keep it to 10 minutes. But, I just asked the question, because to paraphrase Mr. Dunn, so many flaws, so little time. There's a lot of things that we would like to cover that we're going to be putting into the brief, but we want to hit some of the main themes here, not so much as a formal final statement, but to rebut a number of issues that came up.

One of the things that was very clear from the entire presentation we just heard -- first of all, we do agree on quite a few of the factual circumstances about this case. I think that it was pretty clear that people are seeing the industry the same. Where we differ is I guess in the conclusions we've reached about cause and effect and correlations. We did notice a very little discussion really from

people, who care about -- who grow oranges, who own groves. What you heard for the last couple of hours was a very fine organized presentation by people, who make juice and sell juice, and they look at fruit as an input. It's a raw material. It is 80 percent of their cost, but it's not what they own or what their life is based on. So, it's very important to us that we keep going back to our primary argument and our primary focus from previous investigations, that growers are a part of the industry that produces a processed agricultural product.

One of the points that was made repeatedly about the need for Brazilian juice, we do have to address that and we will in more detail. But, the three main points that seem to keep coming up is for the need for Brazilian juice to blend up to meet USDA requirements. That's not correct across the board. It's not the case that the entire Florida industry always needs to have Brazilian juice to blend. It's a matter of how much Valencia they might have, in order to blend their own product to reach the right color. In any given year, they may not need any Brazilian juice for blending purposes. Depending on what the needs of their customers are, they may not need any juice for blending.

In terms of viscosity, Citrus World is one of the largest institutional suppliers to the dispenser market and viscosity is a very important issue for them. They don't need any Brazilian juice, in order to meet the appropriate viscosity levels.

And the one that has been bandied about quite a bit that isn't directly pertinent, I think, to what you're investigating here, but I have to mention it as drawback, the industry -- the processor -- the Brazilian-owned processors in the industry have for several years been trying to convince the Florida growers that it's absolutely essential for sufficient volume of Brazilian juice to come into the United States, so that's there is drawback there to subsidize the exportation of Florida juice, because it's so expensive, because the Florida fruit is expensive for them to try to sell overseas. The concept that the growers would be perfectly satisfied to have -- well, let me put it this way. If I'm making a widget for a dollar and you import for 50 cents and you pay 10 cents on it in duty, then you come to me and you offer to buy my widget that I spent a dollar to make, you'll buy it from 75 cents from me and then you will export it to Europe and you'll be able to do that and make a profit with the benefit of drawback. You'll get that

duty back that you paid on the importation of the Brazilian product that you just bought.

So, where do I stand now as a U.S. maker of these widgets? My new market price is 50 cents, because that's where the import came in. I just lost 75 cents on the transaction. I'm below my cost of production. And, oh, incidentally, I didn't see any of that drawback. It's not coming my way. So, this rationalization for drawback for importing Brazilian juice, it doesn't hold together as neatly as they would like.

I would like to turn to Ms. Warlick, to address some of the charts that Professor Tilley had presented, because we do have a few observations on those.

MS. WARLICK: His Chart 1 shows what would appear, at least visually, to be a correlation of Florida crops with futures prices. And we don't dispute that the supply, the amount of oranges in the world doesn't play a part in futures prices. Yes, supply will dictate prices. But, we are looking here at a fraction of the world's production and the other enormous portion being Brazil, which I think in my Chart 1 shows the comparison there. So, you cannot look at one without the other.

In his Chart 2, it's an interesting table, because he's showing futures prices correlating with Florida inventory size. However, correlation and causation are not the same and to imply that it's the inventories that is causing the prices to fall, I think is the tail wagging the dog. I think if you're going to imply anything from here, it should be that when futures prices drop, you can't sell your orange juice for a decent price, so you put it into inventory. I think that would be the more logical conclusion from that table.

And then Chart 4, I just wanted to point out, this is the chart that shows relative market share. Once again, I think, Mr. Fetzer, your question has been on what is market share. The blue legend shows this is available U.S. product, production and inventory. Many of those inventories are Brazilian juice. So, this is not the kind of market share that I know the Commission calculates when it calculates market share. And that's all.

MR. MCGRATH: Also, a comment on like product. We heard a lot of discussion about the distinctions between NFC and FCOJ. Some of them were obvious physical distinctions that were being observed, some of them were a real stretch. But, I

think it's fair to say the Commission has found there to be a single like product with products that are far different than these two products that we're looking at here. And one of the things that they always look at -- you'll look at the six elements when you're trying to compare them, but one of the things they always look at, at the end, is there a clear dividing line. And there is so many arguments that can be made about whether or not one of these elements is appropriate to apply to NFC and FCOJ or not, but there is no clear dividing line here. We're talking about orange juice. The same people make the juice on the same equipment. The extractors are the same extractors. They're dialed differently, so that the pressure is different. But, they're the same equipment made by the same manufacturer.

In terms of pricing, yes, they are priced differently, but it's not true that there is no futures impact on NFC pricing. Some NFC is sold basis futures; not a lot of it, but there is some that's sold basis futures. Because, as we heard from our colleagues today, everyone agrees, the futures market sets the price. What happens in the futures market is magnified. So when somebody does something in the futures market that is unusual or results in

depression of price, that has a magnified impact throughout.

Another point we have to make is the discussion of fruit price, I think there were several references, mistaken references to our having said that 75 cents per pound of solids is the cost to produce the fruit. And let me just restate what Mr. McKenna said. He said, on average, it costs us 75 cents per pound of solids to offset these expenses. This figure represents a highly productive grove, which is efficiently operated and carrying little or no debt. So, that's a very limited definition on what's the absolutely rock bottom minimum in order to break even. The 90 cents that was talked about as being the current price, that's only just recently, right after the hurricanes. Everybody was -- certainly, people like Mr. McKenna, were producing a lot less fruit on their property. They needed a lot more than 75 cents. They needed a lot more than 90 cents. There's a whole different situation with trying to recover from a hurricane. So, you can't just assume that 75 cents is going to be the figure for everybody throughout the industry.

And I think one other comment that I wanted to make about -- well, I have to comment, since Amy

already talked about the charts, the chart that they were criticizing about -- that we were indicating about the figures on the relative values for exports to different markets from Brazil. Perhaps the numbers are flawed, but I just want to remind you, they came from the Brazilian foreign trade statistics, the official Brazilian statistics. And we've heard some rationalizations for why the U.S. price was so low compared to all the other prices. But, perhaps one of the most interesting ones was Mr. Freeman's defense of ignoring reported U.S. import values. It's, the tax laws made me do it. I have to report low prices, because, otherwise, I'm going to violate U.S. tax law that's preventing me from reporting excessive transfers of profits to lower tax jurisdictions.

So, I think in conclusion, it's very clear that as they agreed throughout their presentation, there are problems right now, serious problems in the industry. A few people said that. The last three seasons have seen the loss of almost 40,000 acres of groves in Florida and an increase of 20,000 hectares or so in Brazil, with an even greater percentage expected for next year, and the land values have declined dramatically in Florida. The indications here with the increased production, we don't deny that

there's an increase production. It means that we are in a very vulnerable -- I'm sorry, the decreased production. It means that we are in a very vulnerable situation and the price has to produce a return or else people will have to get out of the business. Thank you, very much.

MR. CARPENTER: Thank you. Mr. Kalik?

MR. KALIK: Thank you. First, I want to thank the staff for their patience today. It's been a very long day and most of it a very cold day inside this room. The heat seems to have come up. So, I will be short and just focus on a couple of key points.

The like product issue, which, obviously, is a very, very critical issue in this case. As I think you know, the Commission has distinguished in definition. Commissioners have actually written on this subject, as have been in staff reports since 1982: the initial preliminary and the countervailing duty case of frozen concentrated orange juice from Brazil, 1983; and the final, 1984 and the review; 1986 in the preliminary antidumping; 1987 in the final that FCOJM is a different product than single-strength or NFC. The Commission has also ruled that way when looking at concentrated apple juice with regard to

not-from-concentrate. There's a long history of this separation. We understand why Petitioner has tried to lump them together. We want to make certain that history and that precedent remains in place.

A second key factor is we looked at the -- we've talked about really three fundamental factors that led to historically low prices, and no one denies the historically low prices last June, one being the enormous crops that Florida experienced in the last two years. Second, the significant reduction in consumption of orange juice. We will, as we've said to Mr. Carpenter, supply more information on that in the post-hearing brief. We have some of that we supplied in our questionnaires, some significant information. There have been reports up to 17 percent reduction in consumption of orange juice, primarily as a result of the low-carb diets.

But the third factor, which is critical, and everyone is criticizing back and forth is this inventory issue. You had a combination of very, very high supply, reduced demand, huge inventories. But what we haven't discussed enough today is the lack of storage capacity in Florida to hold that inventory. And as the inventories grow larger and larger, there's more and more pressure to move that inventory out of

storage, because you have no place to put the next storage. And when you look at Professor Tilley's analysis and his inventory analysis, this goes directly to the pressures on price down. If I have to process my next crop and my storage capacity is full, I have a couple of options: build more storage capacity; drum up as much product as possible and send it to a third party to store in freezer warehouses; or sell it and get it out of my storage facility, so I can process my next crop. And that is as key a factor as the other two in driving prices forward -- for driving prices downward.

Now, you know, it's very easy to blame low prices on the Brazilians. Hey, we've been arguing these things for 22 years now. But, at the end of the day, as we demonstrated, imports of orange juice have been flat, less than 15 percent on average over time. But more importantly and I think the most important factor in that, which comes back to this drawback issue, which I will address, is that the net import for FCOJM is about two percent, when you net it against exports. And on the NFC side, it's a negative, because we export twice as much Florida NFC as we import from Brazil. So, this whole concern about all these imports somehow adding to inventory,

driving price down, well, what's happening is the Respondents here are importing product for their needs and their exporting product from Florida. Yes, are they taking advantage of the drawback program? Absolutely, because it makes it economically feasible. But, they have the transport systems, they have the markets, they have the customers to move Florida juice out. So when you take a net value between the two, you have virtually no net imports.

Finally, I want to really focus on the post-hurricane situation, because, as Mr. Dunn said earlier, you know, this Commission has to look at injury as it exists today and the threat of it as it exists today. The reality is that futures pricing is up 55 percent as of the close yesterday. And one of the comments made by our panel was that fruit prices have gone up from 60 cents low, up to 90 cents for early-mid, and $1.10 for Valencia, and that they'll likely continue to go up. Well, literally, while we were testifying, Tropicana put out a new bid for fruit for 95 cents for early-mid, and for $1.15 for Valencia, today, while we've been testifying, and that will continue to go up.

So, you have an over 50 percent increase in pricing in the futures market. You have a 50 percent

plus increase in fruit pricing. And the projected end of inventories for the end of this coming Florida crop season has inventories down below -- 50 percent below what they were a year ago and 33 percent down below what they were two years ago. An important point was made by the Petitioners, which said, gee, the hurricanes hit and prices didn't go through the ceiling, which they've done in the past. Well, it's all a function of how much inventory was sitting in the marketplace. Back in the 1989 freeze, there was no inventory and market prices went through the roof. At this point, after these hurricanes, the inventory in place prior to the hurricanes was over 40 weeks of inventory in stock. Once the hurricanes hit, as the inventories start to wear down or are run down, pricing has shown the effect, because you have a worldwide market and you're limited to what -- how much product there is available.

Just one last point and that is we are here in the United States and the Florida growers rightfully are proud of what they have accomplished in their careers, in their lives. But, this is a world market. And, you know, the U.S. marketplace now is about the fifth largest market for Brazilian exports. Europe dwarfs where Brazilian juice is going. Asia

dwarfs the U.S. for where Brazilian juice is going. And the U.S. continues to decline in the market for Brazilian exports, as the other markets continue to grow and consume more and more.

I'd like to end with a quote that appeared in a newspaper article last week. A gentleman, Larry Black, who is the production -- was credited as the production manager for Peace River Packing Company, one of the Petitioners, said, 'I think there's reason to be optimistic for the future.' Black said, 'I think there will be a good strong crop next year. Next year, there's a potential to make money.' Thank you.

MR. CARPENTER: Thank you, Mr. Kalick. You did mention one thing in your closing statement I was going to ask, if the information is readily available on weeks of inventory at different point -- key points in time during the investigation, such as before and after the hurricanes. That might be useful information for us.

MR. KALIK: We do that have and we'll make it available in our post-hearing brief.

MR. CARPENTER: Thank you. Let me first once again, thank everyone for coming here today. I know some of you came from warmer climates. I'm sure

you'll be happy to get back there. In closing, I just wanted to mention a few dates of interest. The deadline for the submission of corrections to the transcript is Monday, January 24th. I think most of you know, at this point, the Department of Commerce has postponed initiation of the investigation. Therefore, we're extending the deadline for briefs in the investigation until Thursday, January 27th. If briefs contain business proprietary information, a public version is due on January 28th. The Commission has not yet scheduled its vote on the investigation. However, it will report its determination to the Secretary of Commerce within 25 days after notification by Commerce of the initiation of the investigation. Commissioners' opinions will then be transmitted to Commerce a week later.

Thank you for coming. This conference is adjourned.

(Whereupon, at 2:59 p.m., the preliminary conference was concluded.)

//

//

//

//

//

CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Orange Juice from Brazil

INVESTIGATION NO.: 731-TA-1089 (Preliminary)

HEARING DATE: January 19, 2005

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: January 19, 2005

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Renee C. M. Katz
Signature of Court Reporter